MISSISSIPPI DEPARTMENT OF PUBLIC SAFETY
DIVISION OF PUBLIC SAFETY PLANNING
OFFICE OF HIGHWAY SAFETY

Implied Consent Statutes

MISSISSIPPI CODE of 1972 ANNOTATED

*** Current through the 2013 Regular Session and 1st and 2nd Extraordinary Sessions ***
Also includes: Legislative Alert: LEXSEE 2014 Miss. HB 412

TITLE 63. MOTOR VEHICLES AND TRAFFIC REGULATIONS
CHAPTER 11. IMPLIED CONSENT LAW

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Miss. Code Ann. § 63-11-1 (2014)

§ 63-11-1. Short title
This chapter may be cited as the Mississippi Implied Consent Law.

HISTORY: SOURCES: Codes, 1942, § 8175-01; Laws, 1971, ch. 515, § 1, eff from and after April 1, 1972.

NOTES: CROSS REFERENCES. --Provisions of this chapter applicable to Mississippi Commercial Driver's License Law, see § 63-1-202.
Provisions of the Implied Consent Law applying instead of statute allowing deposit of driver's license in lieu of bail, in cases of driving while intoxicated, see § 63-9-25.

RESEARCH REFERENCES
ALR. Snowmobile operation as DWI or DUI. 56 A.L.R.4th 1092.
Operation of bicycle as within drunk driving statutes. 73 A.L.R.4th 1139.

AM JUR. 7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 332 et seq.

CJS. 61A C.J.S., Motor Vehicles §§ 1574, 1575, 1583 et seq.

PRACTICE REFERENCES.Mississippi Criminal and Traffic Law Manual (Michie).
Kenworthy, Transportation Safety and Insurance Law, Second Edition (Michie).
Eades, Jury Instructions in Automobile Actions (Michie).
Essen, Defense of Drunk Driving Cases: Criminal -- Civil (Matthew Bender).
Reiff, Drunk Driving and Related Vehicular Offenses, Third Edition (Michie).

LAW REVIEWS. Fraiser, Mississippi Informed Consent Law: A Survey of Decisions Responding

to Recent Scientific Research on Tests for Intoxication, 72 Miss. L.J. 1037, Spring, 2003.
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Miss. Code Ann. § 63-11-3 (2014)

§ 63-11-3. Definitions

The following words and phrases shall have the meaning ascribed herein, unless the context clearly indicates otherwise:

(a) "Driving privilege" or "privilege" means both the driver's license of those licensed in Mississippi and the driving privilege of unlicensed residents and the privilege of nonresidents, licensed or not, the purpose of this section being to make unlicensed and nonresident drivers subject to the same penalties as licensed residents.

(b) "Community service" means work, projects or services for the benefit of the community assigned, supervised and recorded by appropriate public officials.

(c) "Chemical test" means an analysis of a person's blood, breath, urine or other bodily substance for the determination of the presence of alcohol or any other substance which may impair a person's mental or physical ability.

(d) "Refusal to take breath, urine and/or blood test" means an individual declining to take a chemical test, and/or the failure to provide an adequate breath sample as required by the Implied Consent Law when requested by a law enforcement officer.

(e) "Alcohol concentration" means either grams of alcohol per one hundred (100) milliliters of blood or grams of alcohol per two hundred ten (210) liters of breath.

(f) "Qualified person to withdraw blood" means any person who has been trained to withdraw blood in the course of their employment duties including but not limited to laboratory personnel, phlebotomist, emergency medical personnel, nurses and doctors.

(g) "Victim impact panel" means a two-hour seminar in which victims of DUI accidents relate their experiences following the accident to persons convicted under the Implied Consent Law. Paneling programs shall be based on a model developed by Mothers Against Drunk Driving (MADD) victim panel or equivalent program approved by the court.

(h) "Booked" means the administrative step taken after the arrested person is brought to the police station, which involves entry of the person's name, the crime for which the arrest was made, and other relevant facts on the police docket, and which may also include photographing, fingerprinting, and the like.

HISTORY: SOURCES: Codes, 1942, § 8175-24; Laws, 1971, ch. 515, § 24; Laws, 1983, ch. 466, § 1; Laws, 1996, ch. 527, § 3, eff from and after July 2, 1996.

NOTES: EDITOR'S NOTE. --Laws, 1983, ch. 466, § 12, eff from and after July 1, 1983, provides

as follows:

"SECTION 12. Prosecutions, convictions and penalties for violations which occurred prior to July 1, 1983, under laws amended by this act, and suspensions or denials of driver's licenses, permits or privileges made pursuant to laws amended by this act, shall not be affected or abated by the provisions of this act. In addition, convictions which occurred prior to July 1, 1983, under laws amended by this act shall be counted for the purposes of determining the penalties which shall be imposed on any person convicted for a second or subsequent offense under the provisions of the laws amended by this act."

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Miss. Code Ann. § 63-11-5 (2014)

§ 63-11-5. Implied consent to chemical tests; administration of tests; warnings; form of traffic tickets, citations or affidavits; advice regarding right to request legal or medical assistance; rules and regulations

(1) Any person who operates a motor vehicle upon the public highways, public roads and streets of this state shall be deemed to have given his consent, subject to the provisions of this chapter, to a chemical test or tests of his breath for the purpose of determining alcohol concentration. A person shall give his consent to a chemical test or tests of his breath, blood or urine for the purpose of determining the presence in his body of any other substance which would impair a person's ability to operate a motor vehicle. The test or tests shall be administered at the direction of any highway patrol officer, any sheriff or his duly commissioned deputies, any police officer in any incorporated municipality, any national park ranger, any officer of a state-supported institution of higher learning campus police force if such officer is exercising this authority in regard to a violation that occurred on campus property, or any security officer appointed and commissioned pursuant to the Pearl River Valley Water Supply District Security Officer Law of 1978 if such officer is exercising this authority in regard to a violation that occurred within the limits of the Pearl River Valley Water Supply District, when such officer has reasonable grounds and probable cause to believe that the person was driving or had under his actual physical control a motor vehicle upon the public streets or highways of this state while under the influence of intoxicating liquor or any other substance which had impaired such person's ability to operate a motor vehicle. No such test shall be administered by any person who has not met all the educational and training requirements of the appropriate course of study prescribed by the Board on Law Enforcement Officers Standards and Training; provided, however, that sheriffs and elected chiefs of police shall be exempt from such educational and training requirement. No such tests shall be given by any officer or any agency to any person within fifteen (15) minutes of consumption of any substance by mouth.

(2) If the officer has reasonable grounds and probable cause to believe such person to have been driving a motor vehicle upon the public highways, public roads, and streets of this state while under the influence of intoxicating liquor, such officer shall inform such person that his failure to submit to such chemical test or tests of his breath shall result in the suspension of his privilege to operate a motor vehicle upon the public streets and highways of this state for a period of ninety (90) days in the event such person has not previously been convicted of a violation of Section 63-11-30, or, for a period of one (1) year in the event of any previous conviction of such person under Section 63-11-30.

(3) The traffic ticket, citation or affidavit issued to a person arrested for a violation of this chapter shall conform to the requirements of Section 63-9-21(3)(b), and, if filed electronically, shall conform to Section 63-9-21(8).

(4) Any person arrested under the provisions of this chapter shall be informed that he has the right to telephone for the purpose of requesting legal or medical assistance immediately after being booked for a violation under this chapter.

(5) The Commissioner of Public Safety and the State Crime Laboratory created pursuant to Section 45-1-17 are hereby authorized from and after the passage of this section to adopt procedures, rules and regulations, applicable to the Implied Consent Law.

HISTORY: SOURCES: Codes, 1942, § 8175-09; Laws, 1971, ch. 515, § 9; Laws, 1981, ch. 491, § 1; Laws, 1983, ch. 466, § 2; Laws, 1988, ch. 568, § 1; Laws, 1991, ch. 480, § 4; Laws, 1991, ch. 577, § 1; Laws, 1992, ch. 525, § 1; Laws, 1993, ch. 354, § 1; Laws, 1996, ch. 527, § 4; Laws, 1998, ch. 551, § 1; Laws, 2012, ch. 550, § 2, eff from and after July 1, 2012.

NOTES: EDITOR'S NOTE. --Laws 1981, ch. 491, § 15, provides as follows:

"SECTION 15. Prosecutions, convictions and penalties for violations which occurred prior to the effective date of this act under laws amended or repealed by this act, or suspensions or denials of driver's licenses or permits made pursuant to laws amended or repealed by this act, shall not be affected or abated by the provisions of this act."

Laws, 1983, ch. 466, § 12, eff from and after July 1, 1983, provides as follows:

"SECTION 12. Prosecutions, convictions and penalties for violations which occurred prior to July 1, 1983, under laws amended by this act, and suspensions or denials of driver's licenses, permits or privileges made pursuant to laws amended by this act, shall not be affected or abated by the provisions of this act. In addition, convictions which occurred prior to July 1, 1983, under laws amended by this act shall be counted for the purposes of determining the penalties which shall be imposed on any person convicted for a second or subsequent offense under the provisions of the laws amended by this act."

AMENDMENT NOTES. --The 2012 amendment added "and, if filed electronically, shall conform to Section 63-9-21(8)" at the end of (3).

CROSS REFERENCES. --Pearl River Valley Water Supply District Security Officer Law of 1978, see §§ 51-9-171 et seq.

Confiscation of driver's license by arresting officer upon refusal of driver to submit to chemical test under this section, see § 63-11-21.

Penalty for conviction following tests provided for by this section, see § 63-11-30.

JUDICIAL DECISIONS

1. IN GENERAL.

There was no authority in support of the defendant's contention that the officer must arrest the individual before administering the breath test. Green v. State, 710 So. 2d 862 (Miss. 1998).

As long as there is probable cause to believe that the person is impaired by some substance, an officer has acted in accordance with the statute, and consequently, the results of a blood alcohol

concentration tests are admissible. Green v. State, 710 So. 2d 862 (Miss. 1998).

The statute provides for an affidavit containing the required information as well as a ticket. Green v. State, 710 So. 2d 862 (Miss. 1998).

Language in the statute that the arresting officer shall inform a driver arrested for driving under the influence of intoxicating liquor that his failure to submit to a chemical test will result in the suspension of his driver's license does not mandate an arresting officer to advise a suspect of the law's existence. Ewing v. State, 300 So. 2d 916, 95 A.L.R.3d 701 (Miss. 1974).

2. CONSTITUTIONALITY.

The statutory law providing for pre-hearing suspension of a driver's license when the driver refuses to submit to a breathalyzer test is not violative of minimum due process requirements. Lavinghouse v. Mississippi Hwy. Safety Patrol, 620 So. 2d 971 (Miss. 1993).

Initial stop of motorists at highway sobriety checkpoints conducted by state police did not violate Fourth Amendment, as balance among state's interest in preventing drunk driving, extent to which checkpoint program could reasonably be said to advance that interest, and degree of intrusion upon individual motorists, weighed in favor of program. Michigan Dep't of State Police v. Sitz, 496 U.S. 444, 110 S. Ct. 2481, 110 L. Ed. 2d 412 (1990), on remand, 193 Mich. App. 690, 485 N.W.2d 135 (1992).

3. TYPES OF TESTS AUTHORIZED.

The language "chemical test or test of his breath," as provided in §§ 63-11-5 and 63-11-30, contemplates the use of an intoxilyzer machine as a proper means of measuring alcohol content of the blood; as long as accuracy, reliability, and all other factors questioning the competency of the test as proof of intoxication are complied with by the administering officers, the proof thereunder is admissible. Fulton v. City of Starkville, 645 So. 2d 910 (Miss. 1994).

The statutes under the Implied Consent Law allow not only a chemical test or tests of a person's breath, but also other tests of a person's blood or urine for determining alcoholic content; all 3 methods-breath, blood and urine tests-are valid tests for determining alcoholic content in a person's body which would impair that person's ability to operate a motor vehicle. Fulton v. City of Starkville, 645 So. 2d 910 (Miss. 1994).

4. MANDATORY PRE-TEST OBSERVATION.

The length of time that a person charged with driving under the influence must be observed prior to the administration of the breath test is mandatory. By statute, that length of time is 15 minutes; however, police procedure requires that the person be observed for 20 minutes. The observation itself can be performed as long as the defendant is in the presence of the officer. The officer is not required to "stare at" the defendant for the observation to be effective. A dispute as to whether the observation lasted the mandatory length of time or whether the observation was performed while in the presence of an officer goes to the weight of the testimony and the credibility of the witnesses. Fisher v. City of Eupora, 587 So. 2d 878 (Miss. 1991).

5. ADMISSIBILITY AND SUFFICIENCY OF TEST RESULTS.

Where defendant was convicted of first offense DUI, the trial court did not err by admitting the tests results from the Intoxilizer 8000, which showed a .11 blood alcohol content; the test began 27 minutes after the observation period began, well beyond the statutorily-required 15-minute waiting period set forth in Miss. Code Ann. § 63-11-5(1), and proper procedures were followed, the

administrator of the test was certified to perform the test, and the machine had been properly certified. Godbold v. Water Valley, 962 So. 2d 133 (Miss. Ct. App. 2007).

In a suit by a minor driver against a medical insurer seeking coverage for injuries suffered in a one-car accident, the minor's excessive blood alcohol level was not inadmissible under the implied consent law because the blood test was taken by a hospital and was admissible under Miss. Code. Ann. § 63-11-5. Allen v. Clarendon Nat'l Ins. Co. -- F. Supp. 2d --, 2006 U.S. Dist. LEXIS 64602 (S.D. Miss. Sept. 8, 2006).

Officer testified that approximately 45 minutes passed from the time he encountered defendant until the time the breathalyzer test was run, that defendant was in his presence the entire time and was not allowed to take anything by mouth during that time; the trial judge properly held the evidence to be admissible, and the jury found the testimony of the officer to be credible on this question. Graham v. State, 878 So. 2d 162 (Miss. Ct. App. 2004), writ of certiorari denied by 878 So. 2d 67, 2004 Miss. LEXIS 922 (Miss. 2004).

Pursuant to Miss. Code Ann. § 63-11-5, the officer properly read defendant his rights before attempting to administer the intoxilyzer test and obtaining a blood alcohol content reading. Palmer v. City of Oxford, 860 So. 2d 1203 (Miss. 2003).

The language "chemical test or test of his breath," as provided in §§ 63-11-5 and 63-11-30, contemplates the use of an intoxilyzer machine as a proper means of measuring alcohol content of the blood; as long as accuracy, reliability, and all other factors questioning the competency of the test as proof of intoxication are complied with by the administering officers, the proof thereunder is admissible. Fulton v. City of Starkville, 645 So. 2d 910 (Miss. 1994).

A defendant's arrest for driving while intoxicated was legal, and therefore the subsequent intoxilyzer test was not tainted, even though the arresting officer did not observe the defendant driving, where the defendant admitted to the arresting officer that he had been driving an automobile which was involved in an accident, and the defendant was publicly intoxicated in the presence of the officer and others in violation of § 97-29-47. Goforth v. City of Ridgeland, 603 So. 2d 323 (Miss. 1992).

An officer's failure to inform the defendant that he had a right to refuse the officer's request for a blood sample did not render the test results inadmissable in a manslaughter prosecution against the defendant where the officer had probable cause to obtain the blood sample in that the officer knew that the defendant was the driver of an automobile which had collided head on with another vehicle, the collision occurred on a straight and level highway when the road condition was dry, the officer knew that at least two people were dead in the vehicle which the defendant hit, the officer had observed a beer in the defendant's vehicle, and the defendant had slurred speech and dilated pupils. For a search which would otherwise be illegal, absent consent, knowledgeable waiver of one's constitutional right not to be searched is guaranteed by Article 3, § 23 of the Mississippi Constitution. However, blood searches which are based upon probable cause are not illegal, and, therefore, the question of the defendant's knowledgeable waiver was not relevant. Longstreet v. State, 592 So. 2d 16 (Miss. 1991).

A conviction for driving under the influence may be based upon intoxilyzer results if the test is administered in accordance with the proper procedures and the defendant fails to introduce credible evidence which overcomes the statutory presumption of intoxication. Thus, defendants could be convicted on the basis of a breath test which presumed a 2100 to 1 breath to blood ratio where the defendants did not introduce any evidence concerning their particular ratios. Fisher v. City of Eupora, 587 So. 2d 878 (Miss. 1991).

6. JURY INSTRUCTIONS.

Trial court did not err in giving its instruction on defendant's refusal to submit to a breath test as the instruction tracked the language of Miss. Code Ann. § 63-11-5 (Supp. 2012) and did not violate defendant's U.S. Const. amend. V prosecution against self-incrimination. Merritt v. State, 127 So. 3d 1150 (Miss. Ct. App. 2013), writ of certiorari denied by 2014 Miss. LEXIS 14 (Miss. Jan. 9, 2014).

A jury instruction that "a person who operates a motor vehicle over the public roads of this state has given his or her implied consent to submit to the test administered using the Intoxilyzer 5000 to determine the person's blood alcohol content" did not improperly emphasize one piece of evidence over the rest, thereby helping the state by implication by focusing the jury's attention on defendant's refusal to submit to the test. Price v. State, 752 So. 2d 1070 (Miss. Ct. App. 1999).

7. MISCELLANEOUS.

Two officers smelled alcohol emanating from defendant's vehicle; he admitted that he had consumed alcohol, and he refused to perform sobriety tests. Under the evidence, defendant was guilty of driving under the influence by virtue of the implied consent law. Havard v. State, 911 So. 2d 991 (Miss. Ct. App. 2005).

A city was not liable to a man who was arrested for public intoxication and placed in a drunk tank, even though he was never given an intoxication test and even though it was later determined that he had in fact suffered a stroke, where there was no evidence that the city had either tacitly or explicitly encouraged the improper arrest and detention of stroke victims on charges of public drunkenness and where there was no showing that the city had been reckless or grossly negligent in its training, supervising, or disciplining of the officers or jailers involved in plaintiff's arrest and detention; although state law required that an intoximeter test must be given to those arrested for driving while intoxicated, such test was not required for those arrested merely for public drunkenness and liability would not attach on the basis of the city's policy against giving the test to persons in plaintiff's situation. Reeves v. City of Jackson, 608 F.2d 644 (5th Cir. 1979).

ATTORNEY GENERAL OPINIONS

Constable has authority to make arrest for D.U.I., but cannot direct giving of breath test. Compton, March 19, 1992, A.G. Op. #92-0201.

Law enforcement officers may administer blood and urine tests for the purpose of determining the presence of a substance other than alcohol that might impair the person's ability to operate a motor vehicle. Livingston, July 3, 1997, A.G. Op. #97-0364.

A DUI blood sample may be taken from a driver without an arrest or the driver's consent so long as there exists probable cause to make such a search, and it is not necessary to obtain a search warrant prior to taking such a sample. Henry, Aug. 8, 1997, A.G. Op. #97-0464.

If a police officer has probable cause to believe that an individual is driving under the influence on the state fairgrounds in violation of Section 63-11-30, the officer may stop the individual and charge the violator accordingly; however, if the operator of the vehicle refuses to submit to a chemical test, it must be shown that the vehicle was being operated on the public highways, public roads, and streets of the state before the violator can be subjected to the penalties of Section 63-11-5. DeLaughter, Nov. 20, 2000, A.G. Op. #2000-0679.

As long as a reserve officer is a duly commissioned deputy who is properly trained and certified, there is no prohibition against that officer from using the intoxilyzer to test subjects suspected of DUI. Davis, Feb. 28, 2003, A.G. Op. #03-0091.

Certain policies and procedures adopted by the State Crime Laboratory pertaining to breath alcohol testing and blood alcohol testing must be filed with the Secretary of State's Office pursuant to the Administrative Procedures Act; however, portions dealing only with internal operations need not be filed. Huggins, Oct. 24, 2003, A.G. Op. 03-0538.

There is no alternative warning an officer must give an individual stopped for suspected DUI on private property. In order to suspend an individual's driver's license for 90 days who refused an "intoxilyzer" or other chemical intoxication test under Miss. Code Ann. § 63-11-5, the prosecution must show that the vehicle was operated on the public highways, public roads and streets of Mississippi. Sweat, March 2, 2007, A.G. Op. #07-00085, 2007 Miss. AG LEXIS 79.

ALR. Admissibility, in criminal case, of evidence obtained by search by private individual. 36 A.L.R.3d 553.

Admissibility, in criminal cases, of evidence obtained by search conducted by school official or teacher. 49 A.L.R.3d 978.

Driving while intoxicated: duty of law enforcement officer to offer suspect chemical sobriety test under implied consent law. 95 A.L.R.3d 710.

Necessity and sufficiency of proof that tests of blood alcohol concentration were conducted in conformance with prescribed methods. 96 A.L.R.3d 745.

Admissibility in criminal case of blood alcohol test where blood was taken despite defendant's objection or refusal to submit to test. 14 A.L.R.4th 690.

Sufficiency of showing of physical inability to take tests for driving while intoxicated to justify refusal. 68 A.L.R.4th 776.

Operation of bicycle as within drunk driving statutes. 73 A.L.R.4th 1139.

Challenges to use of breath tests for drunk drivers based on claim that partition or conversion ratio between measured breath alcohol and actual blood alcohol is inaccurate. 90 A.L.R.4th 155.

Admissibility and sufficiency of extrapolation evidence in DUI prosecutions. 119 A.L.R.5th 379.

AM JUR. 7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 346-349.

8 Am. Jur. 2d, Automobiles and Highway Traffic §§ 988-991.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 475 (complaint, petition, or declaration -- by license holder -- against administrative agency -- to enjoin further proceedings to suspend or revoke license -- attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license).

2 Am. Jur. Proof of Facts 585, Blood Tests.

17 Am. Jur. Proof of Facts 2d 1, Defense to Charge of Driving Under Influence of Alcohol.

4 Am. Jur. Proof of Facts 3d 229, Proof and Disproof of Alcohol-Induced Driving Impairment Through Breath Alcohol Testing.

9 Am. Jur. Proof of Facts 3d 459, Proof and disproof of alcohol-induced driving impairment through evidence of observable intoxication and coordination testing.

CJS. 61A C.J.S., Motor Vehicles §§ 1607, 1609.

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§ 63-11-7. Authorization of blood test for dead or unconscious accident victims; use of test results

If any person be unconscious or dead as a result of an accident, or unconscious at the time of arrest or apprehension or when the test is to be administered, or is otherwise in a condition rendering him incapable of refusal, such person shall be subjected to a blood test for the purpose of determining the alcoholic content of his blood as provided in this chapter, if the arresting officer has reasonable grounds to believe the person to have been driving a motor vehicle upon the public highways, public roads and streets of this state while under the influence of intoxicating liquor. The results of such test or tests, however, shall not be used in evidence against such person in any court or before any regulatory body without the consent of the person so tested, or, if deceased, such person's legal representative. However, refusal of release of evidence so obtained by such officer or agency will in criminal actions against such person result in the suspension of his or her driver's license for a period of ninety days as provided in this chapter for conscious and capable persons who have refused to submit to such test. Blood may only be withdrawn under the provisions of Section 63-11-9. It is the intent of this chapter that blood samples taken under this section shall be used exclusively for statistical evaluation of accident causes with safeguards established to protect the identity of such victims and to extend the rights of privileged communications to those engaged in taking, handling and evaluating such statistical evidence.

HISTORY: SOURCES: Codes, 1942, § 8175-10; Laws, 1971, ch. 515, § 10, eff from and after April 1, 1972.

JUDICIAL DECISIONS

1. IN GENERAL.

The privilege created by Sections 63-11-7 and 63-11-43 [repealed] to prevent the introduction into evidence of the results of blood alcohol tests taken pursuant to the provisions of the implied consent laws without the consent of the person tested are inconsistent with the Mississippi Rules of Evidence, Rules 501 and 1103, and therefore must yield. Whitehurst v. State, 540 So. 2d 1319 (Miss. 1989).

2. ADMISSIBILITY OF TEST RESULTS.

Blood alcohol test results were admissible in civil case when performed on driver who died as result of accident, both because decedent's representative waived statutory protection and results of test were submitted in defense of person tested, Miss Code §§ 63-11-7 and 63-11-43 [repealed] (1972) being intended to protect interests of person submitted to blood alcohol test. Clark v. Pascagoula, 507 So. 2d 70 (Miss. 1987), overruled on other grounds, State Farm Mut. Auto. Ins. Co. v. Eakins, 1998 Miss. LEXIS 593 (Miss. Dec. 10, 1998).

Blood alcohol test administered as part of medical treatment is admissible in civil action where driver from whom blood is taken has made contractual waiver of physician-patient privilege. Edwards v. Ellis, 478 So. 2d 282 (Miss. 1985).

Where decedent ran into a truck stopped on highway, and where, several hours later, after he had been pronounced dead, a blood sample was taken from his heart and found to contain a blood alcohol level of .17, the trial judge, pursuant to § 63-11-7, properly refused to allow the defense in any way to present to the jury the results of the blood test. Stong v. Freeman Truck Line, 456 So. 2d 698

(Miss. 1984).

3. --CRIMINAL CASE.

Even if state failed to comply with Miss. Code Ann. §63-11-7, defendant's argument that the test results were therefore inadmissible was misplaced since admissibility of evidence is governed by the Mississippi Rules of Evidence, not by statutory enactment. Deeds v. State, 27 So. 3d 1135 (Miss. 2009), writ of certiorari denied by 131 S. Ct. 150, 178 L. Ed. 2d 37, 2010 U.S. LEXIS 5807, 79 U.S.L.W. 3196 (U.S. 2010).

The results of a blood alcohol content test, which was performed on a defendant pursuant to § 63-11-7 while he was semi-conscious in a hospital, were admissible in a criminal action against the defendant, even though the statute provides that the results of such tests shall not be used in evidence against the person without the person's consent, since the statutory exclusion yielded to the Mississippi Rules of Evidence, under which admission of the blood test results was permissible. Whitehurst v. State, 540 So. 2d 1319 (Miss. 1989).

Results of blood-alcohol test performed on defendant after automobile accident resulting in death of 2 people were admissible where officers at scene of accident smelled alcohol and saw several beer cans and whiskey bottle on floorboard, at hospital informed defendant that he was being charged with 2 counts of manslaughter, read defendant his rights, and requested and obtained his consent for blood sample; evidence was sufficient to provide probable cause to search for and seize evidence of intoxication; contention of defendant that test results should not have been admissible because evidence indicated he was unable to consent was rejected, although testimony showed that defendant was belligerent and slurred his speech, was unco-operative, and unsuccessfully resisted efforts to procure blood sample. Whitley v. State, 511 So. 2d 929 (Miss. 1987).

In a prosecution for involuntary manslaughter arising out of a traffic accident, in which the defendant contended that the deceased caused the accident by suddenly turning into the defendant's lane of traffic, the trial court committed reversible error in refusing to permit the introduction into evidence of the results of the blood alcohol test given to the deceased. This section does not prohibit the use of such evidence, over the objection of the legal representative, in favor of an accused in a criminal trial. McNamee v. State, 313 So. 2d 392 (Miss. 1975), overruled on other grounds, Baker v. State, 391 So. 2d 1010 (Miss. 1980).

ATTORNEY GENERAL OPINIONS

Section 63-11-7 makes test results obtained pursuant to 63-11-7 exempt from scope of public records act. Younger Dec. 29, 1993, A.G. Op. #93-0910.

While the medical staff may be immune from liability, a law enforcement officer cannot require the medical staff at a hospital or other medical facility to draw blood from a defendant suspected of violating the implied consent law. However, the county may contract with medical personnel to draw blood in such circumstances. Johnson, Apr. 30, 2004, A.G. Op. 04-0183.

ALR. Admissibility in criminal case of blood alcohol test where blood was taken from unconscious driver. 72 A.L.R.3d 325.

AM JUR. 7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 346-349.

8 Am. Jur. 2d, Automobiles and Highway Traffic §§ 988-991.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 475 (complaint, petition, or declaration -- by license holder -- against administrative agency -- to enjoin further proceedings to

suspend or revoke license -- attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license).

2 Am. Jur. Proof of Facts 585, Blood Tests.

17 Am. Jur. Proof of Facts 2d 1, Defense to Charge of Driving Under Influence of Alcohol.

4 Am. Jur. Proof of Facts 3d 229, Proof and Disproof of Alcohol-Induced Driving Impairment Through Breath Alcohol Testing.

CJS. 61A C.J.S., Motor Vehicles §§ 1607-1609.

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Miss. Code Ann. § 63-11-8 (2014)

§ 63-11-8. Testing of motor vehicle operator involved in accident resulting in death

(1) The operator of any motor vehicle involved in an accident that results in a death shall be tested for the purpose of determining the alcohol content or drug content of such operator's blood, breath or urine. Any blood withdrawal required by this section shall be administered by any qualified person and shall be administered within two (2) hours after such accident, if possible. The exact time of the accident, to the extent possible, and the exact time of the blood withdrawal shall be recorded.

(2) If any investigating law enforcement officer has reasonable grounds to believe that a person is the operator of a motor vehicle involved in an accident that has resulted in a death, it shall be such officer's duty to see that a chemical test is administered as required by this section.

(3) The results of a test administered pursuant to this section may be used as evidence in any court or administrative hearing without the consent of the person so tested.

(4) No person may refuse to submit to a chemical test required under the provisions of this section.

(5) Analysis of blood or urine to determine alcohol or drug content pursuant to this section shall be conducted by the Mississippi Crime Laboratory or a laboratory whose methods and procedures have been approved by the Mississippi Crime Laboratory.

HISTORY: SOURCES: Laws, 1995, ch. 540, § 4; Laws, 1996, ch. 527, § 5, eff from and after July 2, 1996.

JUDICIAL DECISIONS

1. IN GENERAL.

Proper predicate was laid for the introduction of the blood-alcohol-content test results showing that approximately two hours after the accident, a defendant had a blood-alcohol concentration of .09 percent, where the results were admitted into evidence at trial through a forensic toxicologist who tested the sample and where there was extensive testimony about the forensic toxicologist's qualifications to perform the tests and about the lab's procedures and protocols. Lepine v. State, 10 So. 3d 927 (Miss. Ct. App. 2009).

Miss. Code Ann. § 63-11-8, which mandates that a test for determining blood alcohol content be performed on the operator of any motor vehicle involved in an accident resulting in death, was not applicable where defendant was charged under Miss. Code Ann. § 63-11-30(5) for aggravated DUI
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with injury. Smith v. State, 942 So. 2d 308 (Miss. Ct. App. 2006).

In a prosecution for DUI manslaughter, the results of chemical analysis of a blood sample extracted from the defendant shortly after the accident at issue was properly admitted into evidence, notwithstanding that the blood sample was withdrawn by an uncertified technician trainee who was unable at trial to confirm that the defendant's treating physician had approved the drawing of blood in advance of her work. Jones v. State, 761 So. 2d 907 (Miss. Ct. App. 2000).

Admissibility turns on relevance, not on the timing or documentation of the blood testing. Acklin v. State, 722 So. 2d 1264 (Ct. App. 1998).

2. CONSTITUTIONALITY.

This section, which mandates that blood be taken from any driver involved in a fatal accident regardless of the existence of probable cause to believe that alcohol or drugs were involved, is unconstitutional, because it requires search and seizure absent probable cause. McDuff v. State, 763 So. 2d 850 (Miss. 2000).

This section, which mandates that blood be taken from any driver involved in a fatal accident regardless of the existence of probable cause to believe that alcohol or drugs were involved, does not violate the privilege against self-incrimination contained in the Fifth Amendment to the United States Constitution and Article 3, § 26 of the Mississippi Constitution. McDuff v. State, 763 So. 2d 850 (Miss. 2000).

3. TIME FOR TEST.

Defendant's conviction of driving under the influence causing death was appropriate because there was no evidence that police officers deliberately delayed defendant's blood alcohol test, as they had acted immediately in obtaining a subpoena and traveling to Memphis to get a blood sample from defendant, and there was no evidence that defendant was prejudiced by the delay. Moreover, while probable cause existed to test defendant, probable cause did not exist to test the other driver. Andino v. State, 125 So. 3d 700 (Miss. Ct. App. 2013).

Court did not err by denying defendant's motion to suppress her blood test results as her blood was not drawn until three hours after the accident because the evidence showed that the officer was not immediately aware that defendant was under the influence, and he was not immediately aware of her involvement in the accident. Further delay was caused by the time it took for the tow truck to arrive, the travel time to the police station, and the travel time to the hospital. Teston v. State, 44 So. 3d 977 (Miss. Ct. App. 2008), writ of certiorari dismissed by 44 So. 3d 969, 2010 Miss. LEXIS 520 (Miss. 2010).

The results of a blood test performed two and one-half to three hours after an accident were properly introduced into evidence as there was no evidence of deliberate delay on the part of the arresting officers and the time lapse was in no way prejudicial to the defendant. Wash v. State, 790 So. 2d 856 (Miss. Ct. App. 2001).

The administration of a blood test within two and 1/2 hours after an accident constituted substantial compliance with statute where the delay was caused by travel time to a hospital and waiting for a nurse to obtain permission from her supervisor to perform the test. Wilkerson v. State, 731 So. 2d 1173 (Miss. 1998).

ATTORNEY GENERAL OPINIONS

An example where four persons were killed in a 32 car pile-up, under Section 63-11-8, such a multi-vehicle accident may be considered to be several "accidents," only one of which accident

"resulted in a death." The officer may, through his investigation, determine which drivers were involved in the particular accident that resulted in a death, and limit blood testing to those drivers. Perkins, August 23, 1995, A.G. Op. #95-0563.

Section 63-11-8 does not require a vehicle operator to pay for a blood test. The test is administered in order to provide evidence for a possible prosecution. Costs of prosecution are to be paid for by the county and would include a blood test. Perkins, August 23, 1995, A.G. Op. #95-0563.

If a law enforcement officer requests a qualified person to withdraw blood under the statute and a qualified person draws blood, the person who is qualified to withdraw blood can not be held civilly or criminally liable as the result of the proper administration of a blood test when requested in writing by a law enforcement officer to administer such a test. Head, April 24, 1998, A.G. Op. #98-0200.

Where a person qualified to withdraw blood refuses to do so, that person may not be charged with the crime under the statute. Head, April 24, 1998, A.G. Op. #98-0200.

If an operator of a motor vehicle involved in an accident that results in a death is taken out of state for treatment, a law enforcement officer may request the out of state medical personnel draw blood to be used to test alcohol or drug content; however, the medical personnel are under no obligation to honor that request. Head, April 24, 1998, A.G. Op. #98-0200.

The operator of any motor vehicle involved in an accident that results in a death must be tested for the purpose of determining the alcohol content or drug content of such operator's blood, breath, or urine, and there is no requirement that an officer have reasonable grounds to believe that the driver is impaired. Mitchell, July 10, 1998, A. G. Op. #98-0329.

ALR. Authentication of organic nonblood specimen taken from human body for purposes of analysis. 78 A.L.R.5th 1.

AM JUR. 7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 124 et seq., 346-349.
8 Am. Jur. 2d, Automobiles and Highway Traffic §§ 982-984, 988-992, 995, 1193.

CJS. 61 C.J.S., Motor Vehicles §§ 1514-1521.

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Miss. Code Ann. § 63-11-9 (2014)

§ 63-11-9. Administration of blood test under § 63-11-7

Under Section 63-11-7, any qualified person acting at the request of a law enforcement officer may withdraw blood for the purpose of determining the alcoholic content therein. This limitation shall not apply to the taking of breath or urine specimens.

HISTORY: SOURCES: Codes, 1942, § 8175-17; Laws, 1971, ch. 515, § 17; Laws, 1996, ch. 527, § 6, eff from and after July 2, 1996.

JUDICIAL DECISIONS

1. ADMISSIBILITY OF TEST.

Even if the State failed to comply with Miss. Code Ann. § 63-11-9 by failing to identify that the nurse who extracted defendant's blood sample was qualifed to do so, defendant's argument that the blood test results were therefore inadmissible was misplaced, since admissibility of evidence is

governed by the Mississippi Rules of Evidence, not by statutory enactment. Deeds v. State, 27 So. 3d 1135 (Miss. 2009), writ of certiorari denied by 131 S. Ct. 150, 178 L. Ed. 2d 37, 2010 U.S. LEXIS 5807, 79 U.S.L.W. 3196 (U.S. 2010).

ATTORNEY GENERAL OPINIONS

It is within the duties and responsibilities of the sheriff to maintain records related to the accuracy of an intoxilyzer machine that is located within the custody or possession of the sheriff's department. Howell, July 10, 2002, A.G. Op. #02-0379.

ALR. Drunk driving: motorist's right to private sobriety test. 45 A.L.R.4th 11.

Sufficiency of showing of physical inability to take tests for driving while intoxicated to justify refusal. 68 A.L.R.4th 776.

AM JUR. 7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 347, 348.

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Miss. Code Ann. § 63-11-11 (2014)

§ 63-11-11. Taking of urine specimens

If the test given under the provisions of this chapter is a chemical test of urine, the person tested shall be given such privacy in the taking of the urine specimen as will insure the accuracy of the specimen and, at the same time, maintain the dignity of the individual involved.

HISTORY: SOURCES: Codes, 1942, § 8175-19; Laws, 1971, ch. 515, § 19, eff from and after April 1, 1972.

RESEARCH REFERENCES

ALR. Necessity and sufficiency of proof that tests of blood alcohol concentration were conducted in conformance with prescribed methods. 96 A.L.R.3d 745.

Drunk driving: motorist's right to private sobriety test. 45 A.L.R.4th 11.

False light invasion of privacy -- accusation or innuendo as to criminal acts. 58 A.L.R.4th 902.

Sufficiency of showing of physical inability to take tests for driving while intoxicated to justify refusal. 68 A.L.R.4th 776.

Authentication of organic nonblood specimen taken from human body for purposes of analysis. 78 A.L.R.5th 1.

AM JUR. 7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 347, 348.

4 Am. Jur. Proof of Facts 3d 229, Proof and Disproof of Alcohol-Induced Driving Impairment Through Breath Alcohol Testing.

9 Am. Jur. Proof of Facts 3d 459, Proof and disproof of alcohol-induced driving impairment through evidence of observable intoxication and coordination testing.

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Miss. Code Ann. § 63-11-13 (2014)

§ 63-11-13. Right of accused to have test administered by person of his choice; effect of failure

to obtain additional test

The person tested may, at his own expense, have a physician, registered nurse, clinical laboratory technologist or clinical laboratory technician or any other qualified person of his choosing administer a test, approved by the state crime laboratory created pursuant to Section 45-1-17, in addition to any other test, for the purpose of determining the amount of alcohol in his blood at the time alleged as shown by chemical analysis of his blood, breath or urine. The failure or inability to obtain an additional test by such arrested person shall not preclude the admissibility in evidence of the test taken at the direction of a law enforcement officer.

HISTORY: SOURCES: Codes, 1942, § 8175-18; Laws, 1971, ch. 515, § 18; Laws, 1981, ch. 491, § 2, eff from and after July 1, 1981.

NOTES: EDITOR'S NOTE. --Laws, 1981, ch. 491, § 15, provides as follows:

SECTION 15. Prosecutions, convictions and penalties for violations which occurred prior to the effective date of this act under laws amended or repealed by this act, or suspensions or denials of driver's licenses or permits made pursuant to laws amended or repealed by this act, shall not be affected or abated by the provisions of this act.

JUDICIAL DECISIONS

1. IN GENERAL.

Miss. Code Ann. § 63-11-13 makes clear that test results from persons performing analyses at the behest of the accused may be admitted, and the language in § 63-11-13, regarding "any other test" is comparable to the language in former Miss. Code Ann. § 63-11-39(2), which authorized admission of "any other competent evidence" bearing upon the issue of whether a person was intoxicated; clearly "any other test," properly administered under appropriate procedures and designed to determine the alcohol or drug content of one's blood or urine, constitutes other competent evidence. Jones v. State, 881 So. 2d 209 (Miss. Ct. App. 2002), affirmed by 2003 Miss. LEXIS 588 (Miss. Oct. 30, 2003).

Trial court did not err in refusing to exclude the results of defendant's urine analysis performed by a hospital employee simply because the employee did not hold a valid permit from the State Crime Laboratory (Mississippi) pursuant to Miss. Code Ann. § 63-11-19; because the employee, who had 40 years experience, was clearly qualified to perform the analysis at issue, and defendant did not question the credibility of the test or the procedures used by the employee in performing the analysis, the court found that the test was reasonable and the results admissible under Miss. Code Ann. §§ 63-11-39, 63-11-13. Jones v. State, 881 So. 2d 209 (Miss. Ct. App. 2002), affirmed by 2003 Miss. LEXIS 588 (Miss. Oct. 30, 2003).

Defendant's conviction for vehicular homicide was affirmed where the appellate court found that a hospital employee's analysis of his urine that showed defendant had cocaine in his system at the time of the fatal accident was properly admitted even though the employee was not licensed by the State crime laboratory; while Miss. Code Ann. § 63-11-13 addressed tests offered by the accused, it would constitute an anomaly in the law to allow the accused to present evidence of the test analysis done by a person who was not licensed by the State crime laboratory, while, at the same time, preventing the State from using such analysis. Jones v. State, -- So. 2d --, 2002 Miss. App. LEXIS 185 (Miss. Ct. App. Apr. 9, 2002), opinion withdrawn by, substituted opinion at 881 So. 2d 209, 2002 Miss. App. LEXIS 869 (Miss. Ct. App. 2002).

The statute does not provide for notification to be given regarding an individual's right to

independent testing. Green v. State, 710 So. 2d 862 (Miss. 1998).

5. ILLUSTRATIVE CASES.

Where defendant exhibited signs of driving under the influence of intoxicating liquor, he was arrested and taken to the correctional facility where he was informed that he had the right to refuse to breathe into the intoxilyzer. The officers were not required to inform defendant that he had the right to obtain his own blood test in support of his defense under Miss. Code Ann. § 63-11-13. Ivy v. City of Louisville, 976 So. 2d 951 (Miss. Ct. App. 2008).

RESEARCH REFERENCES

ALR. Drunk driving: motorist's right to private sobriety test. 45 A.L.R.4th 11.

Sufficiency of showing of physical inability to take tests for driving while intoxicated to justify refusal. 68 A.L.R.4th 776.

AM JUR. 7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 347, 348.

4 Am. Jur. Proof of Facts 3d 229, Proof and Disproof of Alcohol-Induced Driving Impairment Through Breath Alcohol Testing.

4 Am. Jur. Proof of Facts 3d 439, Unreliability of the Horizontal Gaze Nystagmus Test.

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Miss. Code Ann. § 63-11-15 (2014)

§ 63-11-15. Availability of information concerning test directed by law enforcement officer to accused or his attorney

Upon the written request of the person tested, or his attorney, full information concerning the test taken at the direction of the law enforcement officer shall be made available to him or to his attorney.

HISTORY: SOURCES: Codes, 1942, § 8175-20; Laws, 1971, ch. 515, § 20, eff from and after April 1, 1972.

ATTORNEY GENERAL OPINIONS

A prosecutor or judge should use his or her judgment in deciding whether specific items requested by a defendant are within the scope of full information as intended by this section. If the information is determined to be covered by this section, and is requested by the defendant, such information should be provided to the defendant at no cost. Ringer, Feb. 13, 2004, A.G. Op. 04-0039.

This section is the only statute that addresses discovery in justice court. In that regard, this section only applies to the information concerning the intoxilyzer test taken by the defendant. Any other information sought by a defense attorney in not subject to discovery in justice court. Cobb, May 21, 2004, A.G. Op. 04-0216.

AM JUR. 4 Am. Jur. Proof of Facts 3d 229, Proof and Disproof of Alcohol-Induced Driving Impairment Through Breath Alcohol Testing.

4 Am. Jur. Proof of Facts 3d 439, Unreliability of the Horizontal Gaze Nystagmus Test.

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Miss. Code Ann. § 63-11-17 (2014)

§ 63-11-17. Liability for administering test or analysis

No qualified person, hospital, clinic or funeral home shall incur any civil or criminal liability as the result of the proper administration of a test or chemical analysis of a person's breath, blood or urine when requested in writing by a law enforcement officer to administer such a test or perform such chemical analysis.

HISTORY: SOURCES: Codes, 1942, § 8175-21; Laws, 1971, ch. 515, § 21; Laws, 1973, ch. 354, § 1; Laws, 1996, ch. 527, § 7, eff from and after July 2, 1996.

ATTORNEY GENERAL OPINIONS

While the medical staff may be immune from liability, a law enforcement officer cannot require the medical staff at a hospital or other medical facility to draw blood from a defendant suspected of violating the implied consent law. However, the county may contract with medical personnel to draw blood in such circumstances. Johnson, Apr. 30, 2004, A.G. Op. 04-0183.

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Miss. Code Ann. § 63-11-19 (2014)

§ 63-11-19. Requirements as to methods of testing and qualifications of test administrators; certification of administrators; testing and certification of accuracy of methods, machines or devices

A chemical analysis of the person's breath, blood or urine, to be considered valid under the provisions of this section, shall have been performed according to methods approved by the State Crime Laboratory created pursuant to Section 45-1-17 and the Commissioner of Public Safety and performed by an individual possessing a valid permit issued by the State Crime Laboratory for making such analysis. The State Crime Laboratory and the Commissioner of Public Safety are authorized to approve satisfactory techniques or methods, to ascertain the qualifications and competence of individuals to conduct such analyses, and to issue permits which shall be subject to termination or revocation at the discretion of the State Crime Laboratory. The State Crime Laboratory shall not approve the permit required herein for any law enforcement officer other than a member of the State Highway Patrol, a sheriff or his deputies, a city policeman, an officer of a state-supported institution of higher learning campus police force, a security officer appointed and commissioned pursuant to the Pearl River Valley Water Supply District Security Officer Law of 1978, a national park ranger, a national park ranger technician, a military policeman stationed at a United States military base located within this state other than a military policeman of the Army or Air National Guard or of Reserve Units of the Army, Air Force, Navy or Marine Corps, a marine law enforcement officer employed by the Department of Marine Resources, or a conservation officer employed by the Mississippi Department of Wildlife, Fisheries and Parks. The permit given a marine law enforcement officer shall authorize such officer to administer tests only for violations of Sections 59-23-1 through 59-23-7. The permit given a conservation officer shall authorize such officer to administer tests only for violations of Sections 59-23-1 through 59-23-7 and for hunting related incidents resulting in injury or death to any person by discharge of a weapon as provided under Section 49-4-31.

The State Crime Laboratory shall make periodic, but not less frequently than quarterly, tests of the methods, machines or devices used in making chemical analysis of a person's breath as shall be necessary to ensure the accuracy thereof, and shall issue its certificate to verify the accuracy of the same.

HISTORY: SOURCES: Codes, 1942, § 8175-16; Laws, 1971, ch. 515, § 16; Laws, 1978, ch. 526, § 1; Laws, 1981, ch. 491, § 3; Laws, 1988, ch. 568, § 2; Laws, 1991, ch. 577, § 2; Laws, 1995, ch. 620, § 5; Laws, 1999, ch. 585, § 6; Laws, 2006, ch. 553, § 5, eff from and after July 1, 2006.

NOTES: EDITOR'S NOTE. --Laws, 1981, ch. 491, § 15, provides as follows:

SECTION 15. Prosecutions, convictions and penalties for violations which occurred prior to the effective date of this act under laws amended or repealed by this act, or suspensions or denials of driver's licenses or permits made pursuant to laws amended or repealed by this act, shall not be affected or abated by the provisions of this act.

AMENDMENT NOTES. --The 2006 amendment, in the first paragraph, deleted "a conservation officer or" preceding "a marine law enforcement officer" in the next-to-last sentence and added the last sentence.

CROSS REFERENCES. --Pearl River Valley Water Supply District Security Officer Law of 1978, see §§ 51-9-171 et seq.

JUDICIAL DECISIONS

1. IN GENERAL.

While the State's expert was accepted as an expert in toxicology, there was no testimony that she was in any way involved in the testing of defendant's blood specimen or that she was actively involved in the production of the report and had intimate knowledge of the analyses even though she did not perform the tests first hand, and the trial court erred in admitting the test results without evidence that the expert actually performed the test or participated in its analysis; however, because overwhelming evidence was presented to the jury that defendant was intoxicated, this error was harmless. Debrow v. State, 972 So. 2d 550 (Miss. 2007).

Consistent with 36 CFR § 4.2, federal law preempts state law on the issue of intoxicated motor-vehicle operators within national park areas, and courts are not bound to follow state law, such as Miss. Code Ann. § 63-11-19, when interpreting 36 CFR § 4.23. United States v. Jackson, 470 F. Supp. 2d 654 (S.D. Miss. 2007), affirmed by 273 Fed. Appx. 372, 2008 U.S. App. LEXIS 7811 (5th Cir. Miss. 2008).

Forensic toxicologist provided testimony on how the gas chromatograph operated and how it was calibrated before and after each test. He also established that the machine was run in accordance with crime lab procedures; thus, defendant's claims that the trial court should not have allowed the admission of the blood test results because the result was not achieved within the methods adopted by the Mississippi Commissioner of Public Safety was without merit. Lawrence v. State, 931 So. 2d 600 (Miss. Ct. App. 2005), writ of certiorari denied by 933 So. 2d 303, 2006 Miss. LEXIS 345 (Miss. 2006).

Certificates of intoxilyzer calibration were an example of a public record, the authentication of

which was contemplated by Miss. R. Evid. 901(b)(7); because defendant did not contest that the certificates came from the county jail, they satisfied the authentication requirements of Rule 901(b)(7) and were properly admissible. Pulliam v. State, 856 So. 2d 461 (Miss. Ct. App. 2003), writ of certiorari denied by 859 So. 2d 1017, 2003 Miss. LEXIS 595 (Miss. 2003).

Certification of the intoxilyzer machines have to take place at least quarterly. Meeks v. State, 800 So. 2d 1281 (Miss. Ct. App. 2001).

The statutes under the Implied Consent Law allow not only a chemical test or tests of a person's breath, but also other tests of a person's blood or urine for determining alcoholic content; all 3 methods-breath, blood and urine tests-are valid tests for determining alcoholic content in a person's body which would impair that person's ability to operate a motor vehicle. Fulton v. City of Starkville, 645 So. 2d 910 (Miss. 1994).

2. QUALIFICATIONS OF ADMINISTRATOR AND METHODS OF ADMINISTRATION.

Breath-test results were properly admitted in defendant's trial for vehicular manslaughter while driving under the influence because an officer who conducted the testify was certified, and the officer properly had defendant observed for 20 minutes, although the officer did not personally observe defendant for the full 20 minute period. Hudspeth v. State, 28 So. 3d 600 (Miss. Ct. App. 2009), writ of certiorari denied by 27 So. 3d 404, 2010 Miss. LEXIS 89 (Miss. 2010).

Proper predicate was laid for the introduction of the blood-alcohol-content test results showing that approximately two hours after the accident, a defendant had a blood-alcohol concentration of .09 percent, where the results were admitted into evidence at trial through a forensic toxicologist who tested the sample and where there was extensive testimony about the forensic toxicologist's qualifications to perform the tests and about the lab's procedures and protocols. Lepine v. State, 10 So. 3d 927 (Miss. Ct. App. 2009).

Defendant's conviction for driving under the influence of alcohol, in violation of 36 CFR § 4.23 was supported by sufficient evidence where testimony showed that the Intoxilyzer machine on which defendant was tested was accurate and the tests on defendant, which showed results of .099 and .084, were properly administered; the certification requirements in Miss. Code Ann. § 63-11-19 did not apply because defendant was convicted under federal law, not Mississippi law. United States v. Jackson, 470 F. Supp. 2d 654 (S.D. Miss. 2007), affirmed by 273 Fed. Appx. 372, 2008 U.S. App. LEXIS 7811 (5th Cir. Miss. 2008).

State had to prove as part of its authenticity burden that defendant's breath test was performed by an individual possessing a valid permit issued by the State Crime Laboratory for making such analysis, Miss. Code Ann. § 63-11-19; the statute, however, was not a rule of evidence, so that evidence "otherwise admissible" would not be excluded because of failure to comply with the statute, especially given that the officer was subject to cross-examination on any and all matters concerning his knowledge and experience with the machine, and the State proved that the officer was certified to perform the breath test in compliance with the statute. Henley v. State, 885 So. 2d 89 (Miss. Ct. App. 2004).

Trial court did not err in refusing to exclude the results of defendant's urine analysis performed by a hospital employee simply because the employee did not hold a valid permit from the State Crime Laboratory (Mississippi) pursuant to Miss. Code Ann. § 63-11-19; because the employee, who had 40 years experience, was clearly qualified to perform the analysis at issue, and defendant did not question the credibility of the test or the procedures used by the employee in performing the analysis, the court found that the test was reasonable and the results admissible under Miss. Code Ann. §§

63-11-13, 63-11-39. Jones v. State, 881 So. 2d 209 (Miss. Ct. App. 2002), affirmed by 2003 Miss. LEXIS 588 (Miss. Oct. 30, 2003).

State laid sufficient predicate for accuracy of intoxilyzer results in prosecution for felony driving under the influence (DUI), despite failure to produce the original certificate attesting to machine's accuracy, where officer testified that he was certified with state crime lab to run simulator test on intoxilyzer to certify calibration on it. McIlwain v. State, 700 So. 2d 586 (Miss. 1997).

Prior to admitting results of chemical analysis in prosecution for driving under the influence (DUI), court must determine that proper procedures were followed, that operator of machine was properly certified to perform test, and that accuracy of machine was properly certified. McIlwain v. State, 700 So. 2d 586 (Miss. 1997).

State is not required, for purposes of admitting certificate of accuracy for intoxilyzer, to present testimony and allow cross-examination of calibrating officer; rather, state must present testimony and allow cross-examination of calibrating officer only in absence of certification of intoxilyzer or where there is genuine issue as to authenticity of certification. McIlwain v. State, 700 So. 2d 586 (Miss. 1997).

A blood alcohol test is admissible into evidence when performance of the test "substantially complied" with § 63-11-19. Bearden v. State, 662 So. 2d 620 (Miss. 1995).

A chemical analysis of a person's breath, blood, or urine is deemed valid only when performed according to approved methods, by a person certified to do so, and on a machine certified to be accurate. Certification of the machine must take place at least quarterly. These safeguards ensure a more accurate result in the gathering of scientific evidence through intoxilyzers and are strictly enforced. Where one of the safeguards is deficient, the State bears the burden of showing that the deficiency did not affect the accuracy of the result. Johnston v. State, 567 So. 2d 237 (Miss. 1990).

3. --PARTICULAR CIRCUMSTANCES.

Although the urinalysis evidence came under the Miss. Code Ann. § 13-1-21(1) physician-patient privilege, defendant could not rely on the privilege to exclude the incriminating evidence of cocaine in defendant's system where the procedure allegedly failed to comply with Miss. Code Ann. § 63-11-19. Jones v. State, 858 So. 2d 139 (Miss. 2003).

State provided sufficient evidence regarding calibration of intoxilyzer used to test defendant's blood alcohol level, in prosecution for driving while intoxicated, even if state did not provide actual test cards used in calibration; best evidence rule did not apply where officer responsible for calibration testified at trial and state presented records of results of tests performed. Young v. City of Brookhaven, 693 So. 2d 1355 (Miss. 1997).

There was substantial compliance with § 63-11-19, and the trial judge did not err in admitting intoxilyzer test results into evidence in a prosecution for negligently causing injury while intoxicated under § 63-11-30, where the police dispatcher who administered the intoxilyzer test had attended a one-day school for intoxilyzer test operators conducted by the Mississippi Highway Patrol and had been issued a permit, she testified that she had administered the test "on hundreds," the intoxilyzer machine had been calibrated by someone from the Highway Safety Patrol a few days before the test was administered on the defendant, the dispatcher followed the checklist provided for machine operators, she told the defendant he had a right to refuse the test, the defendant blew into a mouthpiece attached to the machine until a bell rang, the printout card showed .19 percent, and the dispatcher testified that the defendant appeared to be intoxicated. Estes v. State, 605 So. 2d 772 (Miss. 1992).

The evidence was sufficient to establish that an officer who administered an intoxilyzer test was certified to operate the intoxilyzer, even though no evidence was introduced to show that the intoxilyzer used by the officer was the same model on which he was certified; the statute only requires that the person performing the test be certified to do so. However, the officer's testimony that the intoxilyzer was calibrated every month was insufficient to meet the calibration requirements of the statute where a certificate of calibrations indicated that the machine was not calibrated every month, there was no evidence to establish that the machine had been calibrated within the statutory period, and the State made no effort to carry its burden that even if the intoxilyzer was not properly certified the deficiency did not affect the accuracy of the test. Strictly enforcing the statutory requirements, there is no support for the accuracy of the results absent evidence of proper certification, and the trial court abused its discretion in finding a sufficient predicate for admitting the results of the intoxilyzer in the testimony of the officer. Johnston v. State, 567 So. 2d 237 (Miss. 1990).

A city policeman was fully qualified to administer a breath test for alcohol content under § 63-11-19, where he had received training at the Mississippi Highway Safety Patrol under the Mississippi Department of Public Safety on the use of the intoxilyzer and its predecessor machine, the intoximeter, had taken a written examination on which he made a correct score of more than 85 percent, and held a permit from the Department of Public Safety to conduct tests on this machine; furthermore, the result of the test was properly admitted as competent evidence, where the officer precisely followed the procedure recommended by the Department of Public Safety in conducting the examination, the machine had been checked for accuracy only two days prior to the test, and the officer scrupulously followed the Department of Public Safety checklist of steps to take in administering the test, in spite of defendant's claim that the officer failed to determine that defendant's mouth was empty at the time of administering the test. Williams v. State, 434 So. 2d 1340 (Miss. 1983), but see Fisher v. Eupora, 587 So. 2d 878 (Miss. 1991).

4. MISCELLANEOUS.

Where defendant was convicted of DUI, the Intoxilyzer machine used to determine defendant's BAC was calibrated thirteen days prior to its use, and the testing requirements of Miss. Code Ann. § 63-11-19 were satisfied. While the machine was later replaced, the court found that it was working properly when defendant was tested. Dobbins v. City of Starkville, 938 So. 2d 296 (Miss. Ct. App. 2006).

Defendant's conviction for first-offense driving under the influence of alcohol, which was based on an intoxilyzer result, was reversed because the State failed to properly authenticate copies of a page from the intoxilyzer log book and the calibration certificate; the State was required to offer either the testimony of the calibrating officer, the original certificate of calibration, or a certified copy of the certificate as evidence of the machine's accuracy. Jones v. State, 798 So. 2d 592 (Miss. Ct. App. 2001).

When a city's intoxilyzer has been inspected and a certificate of accuracy issued, the municipal clerk's office is fairly seen as the statutorily authorized location for the certificate to be filed. Callahan v. State, 811 So. 2d 420 (Miss. Ct. App. 2001).

Where one of the safeguards in statute governing validity of a chemical analysis of a person's breath, blood, or urine is deficient, state bears burden of showing that deficiency did not affect accuracy of result. McIlwain v. State, 700 So. 2d 586 (Miss. 1997).

A chemical analysis of defendant's blood performed by an individual not possessing a valid permit

issued by the State Board of Health for making such analysis (Code 1972 § 63-11-19) was nevertheless admissible as other competent evidence under Code 1972 § 63-11-39 where evidence detailed in opinion established that test was reasonable. Cutchens v. State, 310 So. 2d 273 (Miss. 1975), cert. denied, 423 U.S. 1061, 96 S. Ct. 799, 46 L. Ed. 2d 652 (1976).

ATTORNEY GENERAL OPINIONS

Any law enforcement officer permitted to administer a chemical analysis test under this section is authorized to enforce the Alcohol Boating Safety Act within his jurisdiction. Whitmore, May 10, 1995, A.G. Op. #95-0148.

Based on this section, the State Crime Laboratory and the Commissioner of Public Safety have the authority to set the qualifications for individuals to receive a permit to conduct a chemical analysis of a person's breath, blood or urine. The only restriction is that a permit may not be issued to any law enforcement officer except those specifically enumerated in Section 63-11-19. Head, August 2, 1996, A.G. Op. #96-0500.

ALR. Drunk driving: motorist's right to private sobriety test. 45 A.L.R.4th 11.

Challenges to use of breath tests for drunk drivers based on claim that partition or conversion ratio between measured breath alcohol and actual blood alcohol is inaccurate. 90 A.L.R.4th 155.

Authentication of blood sample taken from human body for purposes of determining blood alcohol content. 76 A.L.R.5th 1.

Authentication of organic nonblood specimen taken from human body for purposes of analysis. 78 A.L.R.5th 1.

AM JUR. 7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 347, 348.

4 Am. Jur. Proof of Facts 3d 229, Proof and Disproof of Alcohol-Induced Driving Impairment Through Breath Alcohol Testing.

9 Am. Jur. Proof of Facts 3d 459, Proof and disproof of alcohol-induced driving impairment through evidence of observable intoxication and coordination testing.

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Miss. Code Ann. § 63-11-21 (2014)

§ 63-11-21. Actions by law enforcement officer upon refusal of driver to submit to test generally

[Until July 1, 2014, this section shall read:]

If a person refuses upon the request of a law enforcement officer to submit to a chemical test of his breath designated by the law enforcement agency as provided in Section 63-11-5, none shall be given, but the officer shall at that point demand the driver's license of the person, who shall deliver his driver's license into the hands of the officer. If a person refuses to submit to a chemical test under the provisions of this chapter, the person shall be informed by the law enforcement officer that the refusal to submit to the test shall subject him to arrest and punishment consistent with the penalties prescribed in Section 63-11-30 for persons submitting to the test. The officer shall give the driver a receipt for his license on forms prescribed and furnished by the Commissioner of Public Safety. The officer shall forward the driver's license together with a sworn report to the Commissioner of Public Safety stating that he had reasonable grounds and probable cause to believe the person had

been driving a motor vehicle upon the public highways, public roads and streets of this state while under the influence of intoxicating liquor, or any other substance which may impair a person's mental or physical ability, stating such grounds, and that the person had refused to submit to the chemical test of his breath upon request of the law enforcement officer.

[From and after July 1, 2014, this section shall read:]

If a person refuses upon the request of a law enforcement officer to submit to a chemical test of his breath designated by the law enforcement agency as provided in Section 63-11-5, none shall be given, but the officer shall at that point demand the driver's license of the person, who shall deliver his driver's license into the hands of the officer. If a person refuses to submit to a chemical test under the provisions of this chapter, the person shall be informed by the law enforcement officer that the refusal to submit to the test shall subject him to punishment consistent with the penalties prescribed for conviction under Section 63-11-30 and Section 63-11-31. The officer shall give the driver a receipt for his license on forms prescribed and furnished by the Commissioner of Public Safety. The officer shall forward the driver's license together with a sworn report to the Commissioner of Public Safety stating that he had reasonable grounds and probable cause to believe the person had been driving a motor vehicle upon the public highways, public roads and streets of this state while under the influence of intoxicating liquor, or any other substance which may impair a person's mental or physical ability, stating such grounds, and that the person had refused to submit to the chemical test of his breath upon request of the law enforcement officer.

HISTORY: SOURCES: Codes, 1942, § 8175-11; Laws, 1971, ch. 515, § 11; Laws, 1981, ch. 491, § 4; Laws, 1983, ch. 466, § 3; Laws, 1991, ch. 480, § 5; Laws, 1996, ch. 527, § 8; Laws, 2013, ch. 489, § 6, eff from and after July 1, 2014.

NOTES: EDITOR'S NOTE. --Laws, 1981, ch. 491, § 15, provides as follows:

"SECTION 15. Prosecutions, convictions and penalties for violations which occurred prior to the effective date of this act under laws amended or repealed by this act, or suspensions or denials of driver's licenses or permits made pursuant to laws amended or repealed by this act, shall not be affected or abated by the provisions of this act."

Laws, 1983, ch. 466, § 12, eff from and after July 1, 1983, provides as follows:

"SECTION 12. Prosecutions, convictions and penalties for violations which occurred prior to July 1, 1983, under laws amended by this act, and suspensions or denials of driver's licenses, permits or privileges made pursuant to laws amended by this act, shall not be affected or abated by the provisions of this act. In addition, convictions which occurred prior to July 1, 1983, under laws amended by this act shall be counted for the purposes of determining the penalties which shall be imposed on any person convicted for a second or subsequent offense under the provisions of the laws amended by this act."

AMENDMENT NOTES. --The 2013 amendment, effective July 1, 2014, substituted "subject him to punishment consistent with the penalties prescribed for conviction under Section 63-11-30 and Section 63-11-31" for "subject him to arrest and punishment consistent with the penalties prescribed in Section 63-11-30 for persons submitting to the test" in the second sentence.

CROSS REFERENCES. --Implied consent to chemical test, see § 63-11-5.

Review by commissioner of arresting officer's sworn report, see § 63-11-23.

JUDICIAL DECISIONS

1. IN GENERAL.

The statutory law providing for pre-hearing suspension of a driver's license when the driver refuses to submit to a breathalyzer test is not violative of minimum due process requirements. Lavinghouse v. Mississippi Hwy. Safety Patrol, 620 So. 2d 971 (Miss. 1993).

ATTORNEY GENERAL OPINIONS

Under Section 63-11-21, if a person refuses to submit to a chemical test, the officer should inform the person that he is subject to arrest and upon conviction faces the same penalties as one who does submit to the test. The law enforcement office need not provide such a warning if the person does not refuse to submit to a chemical test. See also Section 63-11-30. Jones, November 8, 1996, A.G. Op. #96-0786.

The failure to advise the person as set forth in Section 63-11-21 would not effect the prosecution. This amendment to the code section affords the defendant no additional rights. See also Section 63-11-30. Jones, November 8, 1996, A.G. Op. #96-0786.

Pursuant to Section 63-11-21 it is only necessary for the officer to inform the driver of the consequences if the driver refuses to submit to a chemical test. See also Section 63-11-30. Henderson, November 8, 1996, A.G. Op. #96-0763.

Section 63-11-21 does not require any checklist or form to be filled out regarding the information given to a driver who refuses to submit to a chemical test prior to the driver being charged with D.U.I. Henderson, November 8, 1996, A.G. Op. #96-0763.

The intention of the Legislature under Section 63-11-21 was to insure that a driver was made fully aware of the consequences the driver faced if he refused to submit to a chemical test when requested by a law enforcement officer. Henderson, November 8, 1996, A.G. Op. #96-0763.

If a defendant is convicted of DUI first offense and he also refused the intoxilyzer test, his driver's license is suspended for two years and 90 days (one year pursuant to Section 63-11-30(2)(a) plus 90 days pursuant to Section 63-11-23(1) plus one year pursuant to Section 63-11-30(4)); the two years and 90 days is reduced to 270 days upon successful completion of MASEP. Shirley, Mar. 30, 2001, A.G. Op. #01-0167.

ALR. Request before submitting to chemical sobriety test to communicate with counsel as refusal to take test. 97 A.L.R.3d 852.

Admissibility in criminal case of evidence that accused refused to take test of intoxication. 26 A.L.R.4th 1112.

Sufficiency of showing of physical inability to take tests for driving while intoxicated to justify refusal. 68 A.L.R.4th 776.

AM JUR. 7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 115 et seq.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 475 (complaint, petition, or declaration -- by license holder -- against administrative agency -- to enjoin further proceedings to suspend or revoke license -- attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license).

4 Am. Jur. Proof of Facts 3d 229, Proof and Disproof of Alcohol- Induced Driving Impairment

Through Breath Alcohol Testing.

CJS. 60 C.J.S., Motor Vehicles §§ 391-398.

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Miss. Code Ann. § 63-11-23 (2014)

Legislative Alert:
LEXSEE 2014 Miss. HB 412 -- See section 4.

§ 63-11-23. Review of report of law enforcement officer by Commissioner of Public Safety; notice of suspension; seizure of license where test indicates blood alcohol concentration above specified level; temporary permit to drive; denial of permit; representation of state in proceedings

[Until July 1, 2014, this section shall read:]

(1) The Commissioner of Public Safety, or his authorized agent, shall review the sworn report by a law enforcement officer as provided in Section 63-11-21. If upon such review the Commissioner of Public Safety, or his authorized agent, finds (a) that the law enforcement officer had reasonable grounds and probable cause to believe the person had been driving a motor vehicle upon the public highways, public roads and streets of this state while under the influence of intoxicating liquor or any other substance which may impair a person's mental or physical ability; (b) that he refused to submit to the test upon request of the officer; and (c) that the person was informed that his license and/or driving privileges would be suspended or denied if he refused to submit to the chemical test, then the Commissioner of Public Safety, or his authorized agent, shall give notice to the licensee that his license or permit to drive, or any nonresident operating privilege, shall be suspended thirty (30) days after the date of such notice for a period of ninety (90) days in the event such person has not previously been convicted of a violation of Section 63-11-30, or, for a period of one (1) year in the event of any previous conviction of such person under Section 63-11-30. In the event the commissioner or his authorized agent determines that the license should not be suspended, he shall return the license or permit to the licensee.

The notice of suspension shall be in writing and given in the manner provided in Section 63-1-52(2)(a).

(2) If the chemical testing of a person's breath indicates the blood alcohol concentration was eight one-hundredths percent (.08%) or more for persons who are above the legal age to purchase alcoholic beverages under state law, or two one-hundredths percent (.02%) or more for persons who are below the legal age to purchase alcoholic beverages under state law, based upon grams of alcohol per one hundred (100) milliliters of blood or grams of alcohol per two hundred ten (210) liters of breath as shown by a chemical analysis of such person's blood, or breath, or urine, the arresting officer shall seize the license and give the driver a receipt for his license on forms prescribed by the Commissioner of Public Safety and shall promptly forward the license together with a sworn report to the Commissioner of Public Safety. The receipt given a person as provided herein shall be valid as a permit to operate a motor vehicle for a period of thirty (30) days in order that the defendant be processed through the court having original jurisdiction and a final disposition had. If the defendant requests a trial within thirty (30) days and such trial is not commenced within thirty (30) days, then
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the court shall determine if the delay in the trial is the fault of the defendant or his counsel. If the court finds that such is not the fault of the defendant or his counsel, then the court shall order the defendant's driving privileges to be extended until such time as the defendant is convicted. If a receipt or permit to drive issued pursuant to the provisions of this subsection expires without a trial having been requested as provided for in this subsection, then the Commissioner of Public Safety or his authorized agent shall suspend the license or permit to drive or any nonresident operating privilege for the applicable period of time as provided for in subsection (1) of this section.

(3) If the person is a resident without a license or permit to operate a motor vehicle in this state, the Commissioner of Public Safety, or his authorized agent, shall deny to the person the issuance of a license or permit for a period of one (1) year beginning thirty (30) days after the date of notice of such suspension.

(4) It shall be the duty of the county prosecuting attorney, an attorney employed under the provisions of Section 19-3-49, or in the event there is no such prosecuting attorney for the county, the duty of the district attorney to represent the state in any hearing held under the provisions of Section 63-11-25, under the provisions of Section 63-11-37(2) or under the provisions of Section 63-11-30(2)(a).

[From and after July 1, 2014, this section shall read:]

(1) The Commissioner of Public Safety, or his authorized agent, shall review the sworn report by a law enforcement officer as provided in Section 63-11-21. If upon review the Commissioner of Public Safety, or his authorized agent, finds (a) that the law enforcement officer had reasonable grounds and probable cause to believe the person had been driving a motor vehicle upon the public highways, public roads and streets of this state while under the influence of intoxicating liquor or any other substance that may impair a person's mental or physical ability; (b) that he refused to submit to the test upon request of the officer; and (c) that the person was informed that his license and driving privileges would be suspended or denied if he refused to submit to the chemical test, then the Commissioner of Public Safety, or his authorized agent, shall give notice to the licensee that his license or permit to drive, or any nonresident operating privilege, shall be suspended thirty (30) days after the date of the notice for a period of ninety (90) days in the event the person has not previously been convicted of a violation of Section 63-11-30, or, for a period of one (1) year in the event of any previous conviction of the person under Section 63-11-30. In the event the commissioner or his authorized agent determines that the license should not be suspended, he shall return the license or permit to the licensee.

The notice of suspension shall be in writing and given in the manner provided in Section 63-1-52(2)(a).

(2) If the chemical testing of a person's breath indicates the blood alcohol concentration was eight one-hundredths percent (.08%) or more for persons who are above the legal age to purchase alcoholic beverages under state law, or two one-hundredths percent (.02%) or more for persons who are below the legal age to purchase alcoholic beverages under state law, based upon grams of alcohol per one hundred (100) milliliters of blood or grams of alcohol per two hundred ten (210) liters of breath as shown by a chemical analysis of such person's blood, or breath, or urine, the arresting

officer shall seize the license and give the driver a receipt for his license on forms prescribed by the Commissioner of Public Safety and shall promptly forward the license together with a sworn report to the Commissioner of Public Safety. The receipt given a person as provided herein shall be valid as a permit to operate a motor vehicle for a period of thirty (30) days in order that the defendant be processed through the court having original jurisdiction and a final disposition had. If the defendant requests a trial within thirty (30) days and trial is not commenced within thirty (30) days, then the court shall determine if the delay in the trial is the fault of the defendant or his counsel. If the court finds that it is not the fault of the defendant or his counsel, then the court shall order the defendant's driving privileges to be extended until the defendant is convicted. If a receipt or permit to drive issued pursuant to the provisions of this subsection expires without a trial having been requested as provided for in this subsection, then the Commissioner of Public Safety or his authorized agent shall suspend the license or permit to drive or any nonresident operating privilege for the applicable period of time as provided for in subsection (1) of this section.

(3) If the person is a resident without a license or permit to operate a motor vehicle in this state, the Commissioner of Public Safety, or his authorized agent, shall deny to the person the issuance of a license or permit for a period of one (1) year beginning thirty (30) days after the date of notice of such suspension.

(4) It shall be the duty of the county prosecuting attorney, an attorney employed under the provisions of Section 19-3-49, or in the event there is no such prosecuting attorney for the county, the duty of the district attorney to represent the state in any hearing held under the provisions of Section 63-11-25, under the provisions of Section 63-11-37(2) or under the provisions of Section 63-11-30(2)(a).

(5) The provisions of this section shall not apply to any person who has been nonadjudicated under Section 63-11-30.

HISTORY: SOURCES: Codes, 1942, § 8175-12; Laws, 1971, ch. 515, § 12; Laws, 1981, ch. 491, § 5; Laws, 1983, ch. 466, § 4; Laws, 1989, ch. 482, § 25; Laws, 1991, ch. 412, § 2; Laws, 1996, ch. 527, § 9; Laws, 1998, ch. 505, § 1; Laws, 2000, ch. 542, § 2; Laws, 2002, ch. 367, § 2; Laws, 2013, ch. 489, § 7, eff from and after July 1, 2014.

NOTES: EDITOR'S NOTE. --Subsection (2) of § 63-11-37, referred to in subsection (4) of this section, was repealed effective July 1, 1987.

Laws 1981, ch. 491, § 15, provides as follows:

"SECTION 15. Prosecutions, convictions and penalties for violations which occurred prior to the effective date of this act under laws amended or repealed by this act, or suspensions or denials of driver's licenses or permits made pursuant to laws amended or repealed by this act, shall not be affected or abated by the provisions of this act."

Laws, 1983, ch. 466, § 12, eff from and after July 1, 1983, provides as follows:

"SECTION 12. Prosecutions, convictions and penalties for violations which occurred prior to July 1, 1983, under laws amended by this act, and suspensions or denials of driver's licenses, permits or privileges made pursuant to laws amended by this act, shall not be affected or abated by the provisions of this act. In addition, convictions which occurred prior to July 1, 1983, under laws

amended by this act shall be counted for the purposes of determining the penalties which shall be imposed on any person convicted for a second or subsequent offense under the provisions of the laws amended by this act."

AMENDMENT NOTES. --The 2002 amendment substituted "eight one-hundredths percent (.08%)" for ten one-hundredths percent (.10%) in the first sentence of (2).

The 2013 amendment , effective July 1, 2014, added (5); and made minor stylistic changes.

CROSS REFERENCES. --Right to petition for review of decision of commissioner of public safety, see § 63-11-25.

Additional suspension or denial of license or permit, see § 63-11-30.

Disqualification from driving commercial vehicle for one year if license has been administratively suspended under this section, see § 63-1-216.

JUDICIAL DECISIONS

1. IN GENERAL.

Statute relied upon by motorist did not support claim that circuit court had subject matter jurisdiction over motorist's petition for reduction of term of driver's license suspension for operating under influence, as statute in question was no longer in effect when motorist filed petition, and additionally statute applied only to Department of Public Safety's decision to suspend license pursuant to statute giving Department discretion whether to suspend license after driver had refused to submit to breath test. State, Dep't of Pub. Safety v. Prine, 687 So. 2d 1116 (Miss. 1996).

Section 63-11-23 is penal in nature and effect, and it will be construed strictly though reasonably against infliction of penalty. State v. Martin, 495 So. 2d 501 (Miss. 1986).

2. CONSTITUTIONALITY.

The statutory law providing for pre-hearing suspension of a driver's license when the driver refuses to submit to a breathalyzer test is not violative of minimum due process requirements. Lavinghouse v. Mississippi Hwy. Safety Patrol, 620 So. 2d 971 (Miss. 1993).

3. SUSPENSION PROCEDURE.

Fact that police officer arrested driver prior to requesting that driver submit to official breath test did not establish that improper procedures were followed in suspending driver's license for driving under the influence of intoxicating liquor (DUI) refusal, notwithstanding statute requiring finding that person was placed under arrest after refusal to take test; "arrest" as used in statute referred to arrest for DUI, and probable cause to arrest had to exist before test could be requested, so requiring arrest only after test refusal was unworkable and was inconsistent with intent of statute. Sheppard v. Mississippi State Hwy. Patrol, 693 So. 2d 1326 (Miss. 1997).

Before the license of one subject to § 63-11-23(2) is effectively suspended, the Commission of Public Safety or his authorized agent must (1) in the appropriate administrative manner, take the affirmative step of suspending that person's license or permit to drive, and (2) give the driver notice of the suspension by registered or certified mail as provided in subsection (1) of the statute. State v. Martin, 495 So. 2d 501 (Miss. 1986).

4. EVIDENCE HELD SUFFICIENT.

Sufficient evidence existed to find defendant guilty where although there was some argument that the results of the intoxilyzer test were within the margin of error, no evidence of the margin of error, if any, of the testing procedures was offered and the appellate court could not review the claim; the admissibility of the calibration evidence satisfied the need to prove the accuracy of the intoxilyzer. Pulliam v. State, 856 So. 2d 461 (Miss. Ct. App. 2003), writ of certiorari denied by 859 So. 2d 1017, 2003 Miss. LEXIS 595 (Miss. 2003).

ATTORNEY GENERAL OPINIONS

If an individual has his license suspended under this section prior to going to court, and is subsequently charged with violating § 63-11-40, (driving with license suspended for DUI), an acquittal for the original DUI charge has no effect on the charge for driving with license suspended for DUI. Hester, May 21, 1999, A.G. Op. #99-0242.

The cost associated with impoundment, immobilization, or ignition interlock is a cost of court that should be paid by the defendant upon conviction; if the defendant is indigent, the cost may be borne by the prosecution and the defendant placed on a work program to satisfy the costs. Dantin, July 14, 2000, A.G. Op. #2000-0377.

The method of immobilization is not specified in the law and is left to the discretion of the judge; as such, the judge may tailor the method of immobilization in order to contain the costs incurred by the city or county, i.e., the removal of the tires or car battery or some other part so as to immobilize the vehicle. Dantin, July 14, 2000, A.G. Op. #2000-0377.

If a defendant is convicted of DUI second offense and he also refused the intoxilyzer test, his driver's license is suspended for five years (two years pursuant to Section 63-11-30(2)(b) plus one year pursuant to Section 63-11-23(1) plus two years pursuant to Section 63-11-30(4)); the five years is reduced to three 3 years upon successful completion of chemical dependency treatment at a facility approved by the Department of Mental Health. Shirley, Mar. 30, 2001, A.G. Op. #01-0167.

If a defendant is convicted of DUI third offense and he also refused the intoxilyzer test, his driver's license is suspended for 11 years (five years pursuant to Section 63-11-30(2)(c) plus one year pursuant to Section 63-11-23(1) plus five years pursuant to Section 63-11-30(4)); the 11 years is reduced to seven 7 years upon successful completion of chemical dependency treatment at a facility approved by the Department of Mental Health. Shirley, Mar. 30, 2001, A.G. Op. #01-0167.

ALR. Sufficiency of showing of physical inability to take tests for driving while intoxicated to justify refusal. 68 A.L.R.4th 776.

Applicability, to operation of motor vehicle on private property, of legislation making drunken driving a criminal offense. 52 A.L.R.5th 655.

AM JUR. 7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 146 et seq.

CJS. 60 C.J.S., Motor Vehicles §§ 410 et seq.

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Miss. Code Ann. § 63-11-25 (2014)

§ 63-11-25. Appeals from forfeiture, suspension or denial of license by commissioner generally; exercise of driving privilege suspended during pendency of appeal

If the forfeiture, suspension or denial of issuance is sustained by the Commissioner of Public Safety, or his duly authorized agent pursuant to subsection (1) of Section 63-11-23, upon such hearing, the person aggrieved may file within ten (10) days after the rendition of such decision a petition in the circuit or county court having original jurisdiction of the violation for review of such decision and such hearing upon review shall proceed as a trial de novo before the court without a jury. Provided further, that no such party shall be allowed to exercise the driving privilege while any such appeal is pending.

HISTORY: SOURCES: Codes, 1942, § 8175-13; Laws, 1971, ch. 515, § 13; Laws, 1983, ch. 466, § 5; Laws, 1996, ch. 527, § 10, eff from and after July 2, 1996.

NOTES: EDITOR'S NOTE. --Laws, 1983, ch. 466, § 12, eff from and after July 1, 1983, provides as follows:

"SECTION 12. Prosecutions, convictions and penalties for violations which occurred prior to July 1, 1983, under laws amended by this act, and suspensions or denials of driver's licenses, permits or privileges made pursuant to laws amended by this act, shall not be affected or abated by the provisions of this act. In addition, convictions which occurred prior to July 1, 1983, under laws amended by this act shall be counted for the purposes of determining the penalties which shall be imposed on any person convicted for a second or subsequent offense under the provisions of the laws amended by this act."

CROSS REFERENCES. --Representation of state in proceedings held under this section, see § 63-11-23.

JUDICIAL DECISIONS

1. IN GENERAL.

Licensee was entitled to have driver's license suspension hearing conducted as trial de novo, and, thus, licensee should not have been required to present his case first and should not have been party who carried burden of persuasion. Sheppard v. Mississippi State Hwy. Patrol, 693 So. 2d 1326 (Miss. 1997).

Circuit court's erroneous placement of burden of proof upon licensee, in driver's license suspension hearing requested by licensee, was not reversible error, where facts were undisputable. Sheppard v. Mississippi State Hwy. Patrol, 693 So. 2d 1326 (Miss. 1997).

Driver's alleged confusion regarding belief that Miranda rights applied to chemical testing procedures, following stop for driving under influence of intoxicating liquor (DUI) did not preclude finding that driver refused to submit to chemical testing within meaning of implied consent statute, as statute contained no requirement that such refusal be made with full knowledge of driver's rights and consequences, and driver was informed of his right to refuse test as well as fact that, if he refused test, his license would be suspended for 90 days. Sheppard v. Mississippi State Hwy. Patrol, 693 So. 2d 1326 (Miss. 1997).

Statute relied upon by motorist did not support claim that circuit court had subject matter jurisdiction over motorist's petition for reduction of term of driver's license suspension for operating under influence, as statute in question was no longer in effect when motorist filed petition, and additionally statute applied only to Department of Public Safety's decision to suspend license pursuant to statute giving Department discretion whether to suspend license after driver had refused

to submit to breath test. State, Dep't of Pub. Safety v. Prine, 687 So. 2d 1116 (Miss. 1996).

The statutory law providing for pre-hearing suspension of a driver's license when the driver refuses to submit to a breathalyzer test is not violative of minimum due process requirements. Lavinghouse v. Mississippi Hwy. Safety Patrol, 620 So. 2d 971 (Miss. 1993).

RESEARCH REFERENCES

AM JUR. 7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 154-156.

CJS. 60 C.J.S., Motor Vehicles §§ 434 et seq.

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Miss. Code Ann. § 63-11-26 (2014)

§ 63-11-26. Actions which foreclose judicial review

When the commissioner of public safety, or his authorized agent, shall suspend the driver's license or permit to drive of a person or shall deny the issuance of a license or permit to a person as provided in Section 63-11-30, the person shall not be entitled to any judicial review of or appeal from the actions of the commissioner. A final conviction under said section shall finally adjudicate the privilege of such convicted person to operate a motor vehicle upon the public highways, public roads and streets of this state.

HISTORY: SOURCES: Laws, 1981, ch. 491, § 9; Laws, 1983, ch. 466, § 6, eff from and after July 1, 1983.

NOTES: EDITOR'S NOTE. --Laws 1981, ch. 491, § 15, provides as follows:

"SECTION 15. Prosecutions, convictions and penalties for violations which occurred prior to the effective date of this act under laws amended or repealed by this act, or suspensions or denials of driver's licenses or permits made pursuant to laws amended or repealed by this act, shall not be affected or abated by the provisions of this act."

Laws, 1983, ch. 466, § 12, eff from and after July 1, 1983, provides as follows:

"SECTION 12. Prosecutions, convictions and penalties for violations which occurred prior to July 1, 1983, under laws amended by this act, and suspensions or denials of driver's licenses, permits or privileges made pursuant to laws amended by this act, shall not be affected or abated by the provisions of this act. In addition, convictions which occurred prior to July 1, 1983, under laws amended by this act shall be counted for the purposes of determining the penalties which shall be imposed on any person convicted for a second or subsequent offense under the provisions of the laws amended by this act."

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Miss. Code Ann. § 63-11-27 (2014)

§ 63-11-27. Notification of authorities in home state of suspension of nonresident drivers privilege

When it has been finally determined under the procedures of Sections 63-11-21 through 63-11-25,

that a nonresident's privilege to operate a motor vehicle in this state has been suspended, the commissioner, or his duly authorized agent, shall give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which he has a license.

HISTORY: SOURCES: Codes, 1942, § 8175-14; Laws, 1971, ch. 515, § 14, eff from and after April 1, 1972.

RESEARCH REFERENCES
ALR. Necessity and sufficiency of proof that tests of blood alcohol concentration were conducted in conformance with prescribed methods. 96 A.L.R.3d 745.
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Miss. Code Ann. § 63-11-29 (2014)

§ 63-11-29. Repealed
Repealed by Laws, 1983, ch. 466, § 15, eff from and after July 1, 1983.

[Codes, 1942, §§ 8175-02, 8175-03; Laws, 1971, ch. 515, §§ 2, 3]

NOTES: EDITOR'S NOTE. --Former § 63-11-29 made it unlawful for a habitual user of drugs or a person under the influence of drugs to operate a vehicle, and provided penalties for a violation.
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Miss. Code Ann. § 63-11-30 (2014)
Legislative Alert:
LEXSEE 2014 Miss. HB 412 -- See section 1.
§ 63-11-30. Operation of vehicle while under influence of intoxicating liquor or other substances impairing ability to operate vehicle or with blood alcohol concentrations above specified levels; penalties; granting of hardship driving privileges; concurrent running of suspensions; separate offense of endangering child by driving under influence; penalties

[Until July 1, 2014, this section shall read:]
(1) It is unlawful for any person to drive or otherwise operate a vehicle within this state who (a) is under the influence of intoxicating liquor; (b) is under the influence of any other substance which has impaired such person's ability to operate a motor vehicle; (c) has an alcohol concentration of eight one-hundredths percent (.08%) or more for persons who are above the legal age to purchase alcoholic beverages under state law, or two one-hundredths percent (.02%) or more for persons who are below the legal age to purchase alcoholic beverages under state law, in the person's blood based upon grams of alcohol per one hundred (100) milliliters of blood or grams of alcohol per two hundred ten (210) liters of breath as shown by a chemical analysis of such person's breath, blood or urine administered as authorized by this chapter; (d) is under the influence of any drug or controlled substance, the possession of which is unlawful under the Mississippi Controlled Substances Law; or (e) has an alcohol concentration of four one-hundredths percent (.04%) or more in the person's blood, based upon grams of alcohol per one hundred (100) milliliters of blood or grams of alcohol

per two hundred ten (210) liters of breath as shown by a chemical analysis of such person's blood, breath or urine, administered as authorized by this chapter for persons operating a commercial motor vehicle.

(2) (a) Except as otherwise provided in subsection (3), upon conviction of any person for the first offense of violating subsection (1) of this section where chemical tests provided for under Section 63-11-5 were given, or where chemical test results are not available, such person shall be fined not less than Two Hundred Fifty Dollars ($ 250.00) nor more than One Thousand Dollars ($ 1,000.00), or imprisoned for not more than forty-eight (48) hours in jail , or both; and the court shall order such person to attend and complete an alcohol safety education program as provided in Section 63-11-32. The court may substitute attendance at a victim impact panel instead of forty-eight (48) hours in jail. In addition, the Department of Public Safety, the Commissioner of Public Safety or his duly authorized agent shall, after conviction and upon receipt of the court abstract, suspend the driver's license and driving privileges of such person for a period of not less than ninety (90) days and until such person attends and successfully completes an alcohol safety education program as herein provided. Commercial driving privileges shall be suspended as provided in Section 63-1-216.

The circuit court having jurisdiction in the county in which the conviction was had or the circuit court of the person's county of residence may reduce the suspension of driving privileges under subsection (2)(a) of this section if the denial of which would constitute a hardship on the offender, except that no court may issue such an order reducing the suspension of driving privileges under this subsection until thirty (30) days have elapsed from the effective date of the suspension. Hardships shall only apply to first offenses under subsection (1) of this section, and shall not apply to second, third or subsequent convictions of any person violating subsection (1) of this section. A reduction of suspension on the basis of hardship shall not be available to any person who refused to submit to a chemical test upon the request of a law enforcement officer as provided in Section 63-11-5. When the petition is filed, such person shall pay to the circuit clerk of the court where the petition is filed a fee of Fifty Dollars ($ 50.00), which shall be deposited into the State General Fund to the credit of a special fund hereby created in the State Treasury to be used for alcohol or drug abuse treatment and education, upon appropriation by the Legislature. This fee shall be in addition to any other court costs or fees required for the filing of petitions.

The petition filed under the provisions of this subsection shall contain the specific facts which the petitioner alleges to constitute a hardship and the driver's license number of the petitioner. A hearing may be held on any petition filed under this subsection only after ten (10) days' prior written notice to the Commissioner of Public Safety, or his designated agent, or the attorney designated to represent the state. At such hearing, the court may enter an order reducing the period of suspension.

The order entered under the provisions of this subsection shall contain the specific grounds upon which hardship was determined, and shall order the petitioner to attend and complete an alcohol safety education program as provided in Section 63-11-32. A certified copy of such order shall be delivered to the Commissioner of Public Safety by the clerk of the court within five (5) days of the entry of the order. The certified copy of such order shall contain information which will identify the petitioner, including, but not limited to, the name, mailing address, street address, social security number and driver's license number of the petitioner.

At any time following at least thirty (30) days of suspension for a first offense violation of this section, the court may grant the person hardship driving privileges upon written petition of the defendant, if it finds reasonable cause to believe that revocation would hinder the person's ability to:

(i) Continue his employment;

(ii) Continue attending school or an educational institution; or

(iii) Obtain necessary medical care.

Proof of the hardship shall be established by clear and convincing evidence which shall be supported by independent documentation.

(b) Except as otherwise provided in subsection (3), upon any second conviction of any person violating subsection (1) of this section, the offenses being committed within a period of five (5) years, such person shall be fined not less than Six Hundred Dollars ($ 600.00) nor more than One Thousand Five Hundred Dollars ($ 1,500.00), shall be imprisoned not less than five (5) days nor more than one (1) year and sentenced to community service work for not less than ten (10) days nor more than one (1) year. The minimum penalties shall not be suspended or reduced by the court and no prosecutor shall offer any suspension or sentence reduction as part of a plea bargain. Except as may otherwise be provided by paragraph (d) of this subsection, the Commissioner of Public Safety shall suspend the driver's license of such person for two (2) years. Suspension of a commercial driver's license shall be governed by Section 63-1-216. Upon any second conviction as described in this paragraph, the court shall ascertain whether the defendant is married, and if the defendant is married shall obtain the name and address of the defendant's spouse; the clerk of the court shall submit this information to the Department of Public Safety. Further, the commissioner shall notify in writing, by certified mail, return receipt requested, the owner of the vehicle and the spouse, if any, of the person convicted of the second violation of the possibility of forfeiture of the vehicle if such person is convicted of a third violation of subsection (1) of this section. The owner of the vehicle and the spouse shall be considered notified under this paragraph if the notice is deposited in the United States mail and any claim that the notice was not in fact received by the addressee shall not affect a subsequent forfeiture proceeding.

For any second or subsequent conviction of any person under this section, the person shall also be subject to the penalties set forth in Section 63-11-31.

(c) Except as otherwise provided in subsection (3), for any third or subsequent conviction of any person violating subsection (1) of this section, the offenses being committed within a period of five (5) years, such person shall be guilty of a felony and fined not less than Two Thousand Dollars ($ 2,000.00) nor more than Five Thousand Dollars ($ 5,000.00), shall serve not less than one (1) year nor more than five (5) years in the custody of the Department of Corrections; provided, however, that for any such offense which does not result in serious injury or death to any person, any sentence of incarceration may be served in the county jail rather than in the State Penitentiary at the discretion of the circuit court judge. The minimum penalties shall not be suspended or reduced by the court and no prosecutor shall offer any suspension or sentence reduction as part of a plea bargain. The law

enforcement agency shall seize the vehicle operated by any person charged with a third or subsequent violation of subsection (1) of this section, if such convicted person was driving the vehicle at the time the offense was committed. Such vehicle may be forfeited in the manner provided by Sections 63-11-49 through 63-11-53. Except as may otherwise be provided by paragraph (e) of this subsection, the Commissioner of Public Safety shall suspend the driver's license of such person for five (5) years. The suspension of a commercial driver's license shall be governed by Section 63-1-216.

(d) Except as otherwise provided in subsection (3), any person convicted of a second violation of subsection (1) of this section shall receive an in-depth diagnostic assessment, and if as a result of such assessment is determined to be in need of treatment of his alcohol and/or drug abuse problem, such person shall successfully complete treatment of his alcohol and/or drug abuse problem at a program site certified by the Department of Mental Health. Such person shall be eligible for reinstatement of his driving privileges upon the successful completion of such treatment after a period of one (1) year after such person's driver's license is suspended. Each person who receives a diagnostic assessment shall pay a fee representing the cost of such assessment. Each person who participates in a treatment program shall pay a fee representing the cost of such treatment.

(e) Except as otherwise provided in subsection (3), any person convicted of a third or subsequent violation of subsection (1) of this section shall receive an in-depth diagnostic assessment, and if as a result of such assessment is determined to be in need of treatment of his alcohol and/or drug abuse problem, such person shall enter an alcohol and/or drug abuse program approved by the Department of Mental Health for treatment of such person's alcohol and/or drug abuse problem. If such person successfully completes such treatment, such person shall be eligible for reinstatement of his driving privileges after a period of three (3) years after such person's driver's license is suspended.

(f) The Department of Public Safety shall promulgate rules and regulations for the use of interlock ignition devices as provided in Section 63-11-31 and consistent with the provisions therein. Such rules and regulations shall provide for the calibration of such devices and shall provide that the cost of the use of such systems shall be borne by the offender. The Department of Public Safety shall approve which vendors of such devices shall be used to furnish such systems.

(3) (a) This subsection shall be known and may be cited as Zero Tolerance for Minors. The provisions of this subsection shall apply only when a person under the age of twenty-one (21) years has a blood alcohol concentration of two one-hundredths percent (.02%) or more, but lower than eight one-hundredths percent (.08%). If such person's blood alcohol concentration is eight one-hundredths percent (.08%) or more, the provisions of subsection (2) shall apply.

(b) Upon conviction of any person under the age of twenty-one (21) years for the first offense of violating subsection (1) of this section where chemical tests provided for under Section 63-11-5 were given, or where chemical test results are not available, such person shall have his driver's license suspended for ninety (90) days and shall be fined Two Hundred Fifty Dollars ($ 250.00); and the court shall order such person to attend and complete an alcohol safety education program as provided in Section 63-11-32. The court may also require attendance at a victim impact panel.

The court in the county in which the conviction was had or the circuit court of the person's county of residence may reduce the suspension of driving privileges under subsection (2)(a) of this section if the denial of which would constitute a hardship on the offender, except that no court may issue such an order reducing the suspension of driving privileges under this subsection until thirty (30) days have elapsed from the effective date of the suspension. Hardships shall only apply to first offenses under subsection (1) of this section, and shall not apply to second, third or subsequent convictions of any person violating subsection (1) of this section. A reduction of suspension on the basis of hardship shall not be available to any person who refused to submit to a chemical test upon the request of a law enforcement officer as provided in Section 63-11-5. When the petition is filed, such person shall pay to the circuit clerk of the court where the petition is filed a fee of Fifty Dollars ($ 50.00), which shall be deposited into the State General Fund to the credit of a special fund hereby created in the State Treasury to be used for alcohol or drug abuse treatment and education, upon appropriation by the Legislature. This fee shall be in addition to any other court costs or fees required for the filing of petitions.

The petition filed under the provisions of this subsection shall contain the specific facts which the petitioner alleges to constitute a hardship and the driver's license number of the petitioner. A hearing may be held on any petition filed under this subsection only after ten (10) days' prior written notice to the Commissioner of Public Safety, or his designated agent, or the attorney designated to represent the state. At such hearing, the court may enter an order reducing the period of suspension.

The order entered under the provisions of this subsection shall contain the specific grounds upon which hardship was determined, and shall order the petitioner to attend and complete an alcohol safety education program as provided in Section 63-11-32. A certified copy of such order shall be delivered to the Commissioner of Public Safety by the clerk of the court within five (5) days of the entry of the order. The certified copy of such order shall contain information which will identify the petitioner, including, but not limited to, the name, mailing address, street address, social security number and driver's license number of the petitioner.

At any time following at least thirty (30) days of suspension for a first offense violation of this section, the court may grant the person hardship driving privileges upon written petition of the defendant, if it finds reasonable cause to believe that revocation would hinder the person's ability to:

(i) Continue his employment;

(ii) Continue attending school or an educational institution; or

(iii) Obtain necessary medical care.

Proof of the hardship shall be established by clear and convincing evidence which shall be supported by independent documentation.

(c) Upon any second conviction of any person under the age of twenty-one (21) years violating subsection (1) of this section, the offenses being committed within a period of five (5) years, such person shall be fined not more than Five Hundred Dollars ($ 500.00) and shall have his driver's

license suspended for one (1) year.

(d) For any third or subsequent conviction of any person under the age of twenty-one (21) years violating subsection (1) of this section, the offenses being committed within a period of five (5) years, such person shall be fined not more than One Thousand Dollars ($ 1,000.00) and shall have his driver's license suspended until he reaches the age of twenty-one (21) or for two (2) years, whichever is longer.

(e) Any person under the age of twenty-one (21) years convicted of a second violation of subsection (1) of this section, may have the period that his driver's license is suspended reduced if such person receives an in-depth diagnostic assessment, and as a result of such assessment is determined to be in need of treatment of his alcohol and/or drug abuse problem and successfully completes treatment of his alcohol and/or drug abuse problem at a program site certified by the Department of Mental Health. Such person shall be eligible for reinstatement of his driving privileges upon the successful completion of such treatment after a period of six (6) months after such person's driver's license is suspended. Each person who receives a diagnostic assessment shall pay a fee representing the cost of such assessment. Each person who participates in a treatment program shall pay a fee representing the cost of such treatment.

(f) Any person under the age of twenty-one (21) years convicted of a third or subsequent violation of subsection (1) of this section shall complete treatment of an alcohol and/or drug abuse program at a site certified by the Department of Mental Health.

(g) The court shall have the discretion to rule that a first offense of this subsection by a person under the age of twenty-one (21) years shall be nonadjudicated. Such person shall be eligible for nonadjudication only once. The Department of Public Safety shall maintain a confidential registry of all cases which are nonadjudicated as provided in this paragraph. A judge who rules that a case is nonadjudicated shall forward such ruling to the Department of Public Safety. Judges and prosecutors involved in implied consent violations shall have access to the confidential registry for the purpose of determining nonadjudication eligibility. A record of a person who has been nonadjudicated shall be maintained for five (5) years or until such person reaches the age of twenty-one (21) years. Any person whose confidential record has been disclosed in violation of this paragraph shall have a civil cause of action against the person and/or agency responsible for such disclosure.

(4) In addition to the other penalties provided in this section, every person refusing a law enforcement officer's request to submit to a chemical test of his breath as provided in this chapter, or who was unconscious at the time of a chemical test and refused to consent to the introduction of the results of such test in any prosecution, shall suffer an additional suspension of driving privileges as follows:

The Commissioner of Public Safety or his authorized agent shall suspend the driver's license or permit to drive or deny the issuance of a license or permit to such person as provided for first, second and third or subsequent offenders in subsection (2) of this section. Such suspension shall be in addition to any suspension imposed pursuant to subsection (1) of Section 63-11-23. The minimum

suspension imposed under this subsection shall not be reduced and no prosecutor is authorized to offer a reduction of such suspension as part of a plea bargain.

(5) Every person who operates any motor vehicle in violation of the provisions of subsection (1) of this section and who in a negligent manner causes the death of another or mutilates, disfigures, permanently disables or destroys the tongue, eye, lip, nose or any other limb, organ or member of another shall, upon conviction, be guilty of a separate felony for each such death, mutilation, disfigurement or other injury and shall be committed to the custody of the State Department of Corrections for a period of time of not less than five (5) years and not to exceed twenty-five (25) years for each such death, mutilation, disfigurement or other injury, and the imprisonment for the second or each subsequent conviction, in the discretion of the court, shall commence either at the termination of the imprisonment for the preceding conviction or run concurrently with the preceding conviction. Any person charged with causing the death of another as described in this subsection shall be required to post bail before being released after arrest.

(6) Upon conviction of any violation of subsection (1) of this section, the trial judge shall sign in the place provided on the traffic ticket, citation or affidavit stating that the person arrested either employed an attorney or waived his right to an attorney after having been properly advised. If the person arrested employed an attorney, the name, address and telephone number of the attorney shall be written on the ticket, citation or affidavit. The judge shall cause a copy of the traffic ticket, citation or affidavit, and any other pertinent documents concerning the conviction, to be sent to the Commissioner of Public Safety. A copy of the traffic ticket, citation or affidavit and any other pertinent documents, having been attested as true and correct by the Commissioner of Public Safety, or his designee, shall be sufficient proof of the conviction for purposes of determining the enhanced penalty for any subsequent convictions of violations of subsection (1) of this section.

(7) Convictions in other states of violations for driving or operating a vehicle while under the influence of an intoxicating liquor or while under the influence of any other substance that has impaired the person's ability to operate a motor vehicle occurring after July 1, 1992, shall be counted for the purposes of determining if a violation of subsection (1) of this section is a first, second, third or subsequent offense and the penalty that shall be imposed upon conviction for a violation of subsection (1) of this section.

(8) For the purposes of determining how to impose the sentence for a second, third or subsequent conviction under this section, the indictment shall not be required to enumerate previous convictions. It shall only be necessary that the indictment state the number of times that the defendant has been convicted and sentenced within the past five (5) years under this section to determine if an enhanced penalty shall be imposed. The amount of fine and imprisonment imposed in previous convictions shall not be considered in calculating offenses to determine a second, third or subsequent offense of this section.

(9) Any person under the legal age to obtain a license to operate a motor vehicle convicted under this section shall not be eligible to receive such license until the person reaches the age of eighteen (18) years.

(10) Suspension of driving privileges for any person convicted of violations of subsection (1) of this section shall run consecutively.

(11) The court may order the use of any ignition interlock device as provided in Section 63-11-31.

(12) A person who violates subsection (1) of this section while transporting in a motor vehicle a child under the age of sixteen (16) years is guilty of the separate offense of endangering a child by driving under the influence of alcohol or any other substance which has impaired such person's ability to operate a motor vehicle. The offense of endangering a child by driving under the influence of alcohol or any other substance which has impaired such person's ability to operate a motor vehicle shall not be merged with an offense of violating subsection (1) of this section for the purposes of prosecution and sentencing. An offender who is convicted of a violation of this subsection shall be punished as follows:

(a) A person who commits a violation of this subsection which does not result in the serious injury or death of a child and which is a first conviction shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than One Thousand Dollars ($ 1,000.00) or shall be imprisoned for not more than twelve (12) months, or both;

(b) A person who commits a violation of this subsection which does not result in the serious injury or death of a child and which is a second conviction shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than One Thousand Dollars ($ 1,000.00) nor more than Five Thousand Dollars ($ 5,000.00) or shall be imprisoned for one (1) year, or both;

(c) A person who commits a violation of this subsection which does not result in the serious injury or death of a child and which is a third or subsequent conviction shall be guilty of a felony and, upon conviction, shall be fined not less than Ten Thousand Dollars ($ 10,000.00) or shall be imprisoned for not less than one (1) year nor more than five (5) years, or both; and

(d) A person who commits a violation of this subsection which results in the serious injury or death of a child, without regard to whether such offense was a first, second, third or subsequent offense shall be guilty of a felony and, upon conviction, shall be punished by a fine of not less than Ten Thousand Dollars ($ 10,000.00) and shall be imprisoned for not less than five (5) years nor more than twenty-five (25) years.

[From and after July 1, 2014, this section shall read:]

(1) It is unlawful for any person to drive or otherwise operate a vehicle within this state who (a) is under the influence of intoxicating liquor; (b) is under the influence of any other substance that has impaired the person's ability to operate a motor vehicle; (c) has an alcohol concentration of eight one-hundredths percent (.08%) or more for persons who are above the legal age to purchase alcoholic beverages under state law, or two one-hundredths percent (.02%) or more for persons who are below the legal age to purchase alcoholic beverages under state law, in the person's blood based upon grams of alcohol per one hundred (100) milliliters of blood or grams of alcohol per two hundred ten (210) liters of breath as shown by a chemical analysis of the person's breath, blood or urine administered as authorized by this chapter; (d) is under the influence of any drug or controlled

substance, the possession of which is unlawful under the Mississippi Controlled Substances Law; or (e) has an alcohol concentration of four one-hundredths percent (.04%) or more in the person's blood, based upon grams of alcohol per one hundred (100) milliliters of blood or grams of alcohol per two hundred ten (210) liters of breath as shown by a chemical analysis of the person's blood, breath or urine, administered as authorized by this chapter for persons operating a commercial motor vehicle.

(2) (a) First offense DUI. (i) Except as otherwise provided in subparagraph (iii) of this subsection (2)(a) and subsection (3) of this section, upon conviction of any person for the first offense of violating subsection (1) of this section where chemical tests provided for under Section 63-11-5 were given, or where chemical test results are not available, the person shall be fined not less than Two Hundred Fifty Dollars ($ 250.00) nor more than One Thousand Dollars ($ 1,000.00), or imprisoned for not more than forty-eight (48) hours in jail, or both; and the court shall order the person to attend and complete an alcohol safety education program as provided in Section 63-11-32. The court may substitute attendance at a victim impact panel instead of forty-eight (48) hours in jail. In addition, the Department of Public Safety, or the Commissioner of Public Safety or his duly authorized agent shall, after conviction and upon receipt of the court abstract, suspend the driver's license and driving privileges of the person for a period of ninety (90) days and until such person attends and successfully completes an alcohol safety education program as provided herein or, in the discretion of the court, thirty (30) days and the person's driving privilege shall be exercised only under an ignition-interlock-restricted driver's license for ninety (90) days following the mandatory thirty-day license suspension. The person shall not be eligible for any other form of license until such the person attends and successfully completes an alcohol safety education program as provided in Section 63-11-32.

(ii) Commercial driving privileges shall be suspended as provided in Section 63-1-216.

(iii) A qualifying first offense is one where a breath test was not refused unless the court provides written findings as to why nonadjudication is being allowed where a breath test was refused. The person shall not be eligible for any other form of license until the person attends and successfully completes an alcohol safety education program as provided in Section 63-11-32. The judge shall forward a record of every nonadjudicated case to the Department of Public Safety and the Department of Public Safety shall maintain a confidential registry of all cases that are nonadjudicated as provided in this subparagraph (iii). Judges and prosecutors involved in the trial of implied consent violations shall have access to the confidential registry for the purpose of determining whether a person has previously been the subject of a nonadjudicated case and is therefore ineligible for another nonadjudication. A record of nonadjudication shall be maintained for five (5) years.

(iv) The court may enter an order of nonadjudication concerning a nonresident first offender, taking into consideration the available resources and programs in the offender's home jurisdiction and the ability of the court to monitor the person's compliance with conditions imposed by the court.

(b) Second offense DUI. (i) Except as otherwise provided in subsection (3), upon any second conviction of any person violating subsection (1) of this section, the offenses being committed within a period of five (5) years, such the person shall be fined not less than Six Hundred Dollars ($ 600.00)

nor more than One Thousand Five Hundred Dollars ($ 1,500.00), shall be imprisoned not less than five (5) days nor more than one (1) year and sentenced to community service work for not less than ten (10) days nor more than one (1) year. The minimum penalties shall not be suspended or reduced by the court and no prosecutor shall offer any suspension or sentence reduction as part of a plea bargain. Upon notification of conviction, the Commissioner of Public Safety shall suspend the driver's license of the person for forty-five (45) days. The person's driving privilege shall not be restored except by means of an ignition-interlock-restricted driver's license for one (1) year following the mandatory forty-five-day suspension. The person shall not be eligible for any other form of license until the person attends and successfully completes an alcohol safety education program as provided in Section 63-11-32.

(ii) Suspension of a commercial driver's license shall be governed by Section 63-1-216.

(c) Third offense DUI. (i) Except as otherwise provided in subsection (3), for any third conviction of any person violating subsection (1) of this section, the offenses being committed within a period of five (5) years, the person shall be guilty of a felony and fined not less than Two Thousand Dollars ($ 2,000.00) nor more than Five Thousand Dollars ($ 5,000.00), and shall serve not less than one (1) year nor more than five (5) years in the custody of the Department of Corrections. For any such offense that does not result in serious injury or death to any person, the sentence of incarceration may be served in the county jail rather than in the State Penitentiary at the discretion of the circuit court judge. The minimum penalties shall not be suspended or reduced by the court and no prosecutor shall offer any suspension or sentence reduction as part of a plea bargain. Except as may otherwise be provided by paragraph (e) of this subsection, the Commissioner of Public Safety shall suspend the driver's license of such person for two (2) years. The person will not be eligible for restoration of the driving privilege except by means of an ignition-interlock-restricted driver's license for three (3) years following release from incarceration and following the mandatory two-year driver's license suspension.

(ii) The suspension of a commercial driver's license shall be governed by Section 63-1-216.

(d) Fourth or subsequent offense DUI. Except as otherwise provided in subsection (3), for any fourth or subsequent conviction of any person violating subsection (1) of this section without regard to the period of time over which the offenses were committed, the person shall be guilty of a felony and fined not less than Three Thousand Dollars ($ 3,000.00) nor more than Ten Thousand Dollars ($ 10,000.00) and shall serve not less than two (2) nor more than ten (10) years in the custody of the Department of Corrections. The Commissioner of Public Safety shall suspend the driver's license of the person for five (5) years which shall begin upon the person's release from the custody of the Department of Corrections.

(e) Except as otherwise provided in subsection (3), any person convicted of a second or subsequent violation of subsection (1) of this section shall receive an in-depth diagnostic assessment, and if as a result of the assessment is determined to be in need of treatment for alcohol and/or drug abuse the person shall successfully complete treatment at a program site certified by the Department of Mental Health. Each person who receives a diagnostic assessment shall pay a fee representing the cost of such the assessment. Each person who participates in a treatment program shall pay a fee

representing the cost of treatment.

(f) The Department of Public Safety shall promulgate rules and regulations for the use of ignition-interlock devices as provided in Section 63-11-31 and consistent with the provisions therein. The rules and regulations shall provide that installation of the device shall occur at the residence of the offender and for the calibration of the devices and shall provide that the cost of the use of the systems shall be borne by the offender. The Department of Public Safety shall approve which vendors shall be used to furnish the systems and may assess fees to such vendors. The maximum costs to the offender as prescribed in the department's rules and regulations shall not exceed One Hundred Fifty Dollars ($ 150.00) for installation and Two Dollars and Fifty Cents ($ 2.50) per day for the user fee, and the department shall also prescribe maximum fees for periodic inspections, calibrations and repairs.

(3) Zero Tolerance for Minors. (a) This subsection shall be known and may be cited as Zero Tolerance for Minors. The provisions of this subsection shall apply only when a person under the age of twenty-one (21) years has a blood alcohol concentration of two one-hundredths percent (.02%) or more, but lower than eight one-hundredths percent (.08%). If such person's blood alcohol concentration is eight one-hundredths percent (.08%) or more, the provisions of subsection (2) shall apply.

(b) Upon conviction of any person under the age of twenty-one (21) years for the first offense of violating subsection (1) of this section where chemical tests provided for under Section 63-11-5 were given, or where chemical test results are not available, such person shall have his driver's license suspended for ninety (90) days and shall be fined Two Hundred Fifty Dollars ($ 250.00); and the court shall order such person to attend and complete an alcohol safety education program as provided in Section 63-11-32. The court may also require attendance at a victim impact panel.

The court in the county in which the conviction was had or the circuit court of the person's county of residence may reduce the suspension of driving privileges under subsection (2)(a) of this section if the denial of which would constitute a hardship on the offender, except that no court may issue such an order reducing the suspension of driving privileges under this subsection until thirty (30) days have elapsed from the effective date of the suspension. Hardships shall only apply to first offenses under subsection (1) of this section, and shall not apply to second, third or subsequent convictions of any person violating subsection (1) of this section. A reduction of suspension on the basis of hardship shall not be available to any person who refused to submit to a chemical test upon the request of a law enforcement officer as provided in Section 63-11-5. When the petition is filed, such person shall pay to the circuit clerk of the court where the petition is filed a fee of Fifty Dollars ($ 50.00), which shall be deposited into the State General Fund to the credit of a special fund hereby created in the State Treasury to be used for alcohol or drug abuse treatment and education, upon appropriation by the Legislature. This fee shall be in addition to any other court costs or fees required for the filing of petitions.

The petition filed under the provisions of this subsection shall contain the specific facts which the petitioner alleges to constitute a hardship and the driver's license number of the petitioner. A hearing may be held on any petition filed under this subsection only after ten (10) days' prior written notice

to the Commissioner of Public Safety, or his designated agent, or the attorney designated to represent the state. At such hearing, the court may enter an order reducing the period of suspension.

The order entered under the provisions of this subsection shall contain the specific grounds upon which hardship was determined, and shall order the petitioner to attend and complete an alcohol safety education program as provided in Section 63-11-32. A certified copy of such order shall be delivered to the Commissioner of Public Safety by the clerk of the court within five (5) days of the entry of the order. The certified copy of such order shall contain information which will identify the petitioner, including, but not limited to, the name, mailing address, street address, social security number and driver's license number of the petitioner.

At any time following at least thirty (30) days of suspension for a first offense violation of this section, the court may grant the person hardship driving privileges upon written petition of the defendant, if it finds reasonable cause to believe that revocation would hinder the person's ability to:

(i) Continue his employment;

(ii) Continue attending school or an educational institution; or

(iii) Obtain necessary medical care.

Proof of the hardship shall be established by clear and convincing evidence which shall be supported by independent documentation.

(c) Upon any second conviction of any person under the age of twenty-one (21) years violating subsection (1) of this section, the offenses being committed within a period of five (5) years, such person shall be fined not more than Five Hundred Dollars ($ 500.00) and shall have his driver's license suspended for one (1) year.

(d) For any third or subsequent conviction of any person under the age of twenty-one (21) years violating subsection (1) of this section, the offenses being committed within a period of five (5) years, such person shall be fined not more than One Thousand Dollars ($ 1,000.00) and shall have his driver's license suspended until he reaches the age of twenty-one (21) or for two (2) years, whichever is longer.

(e) Any person under the age of twenty-one (21) years convicted of a second violation of subsection (1) of this section, may have the period that his driver's license is suspended reduced if such person receives an in-depth diagnostic assessment, and as a result of such assessment is determined to be in need of treatment of his alcohol and/or drug abuse problem and successfully completes treatment of his alcohol and/or drug abuse problem at a program site certified by the Department of Mental Health. Such person shall be eligible for reinstatement of his driving privileges upon the successful completion of such treatment after a period of six (6) months after such person's driver's license is suspended. Each person who receives a diagnostic assessment shall pay a fee representing the cost of such assessment. Each person who participates in a treatment program shall pay a fee representing the cost of such treatment.

(f) Any person under the age of twenty-one (21) years convicted of a third or subsequent violation of subsection (1) of this section shall complete treatment of an alcohol and/or drug abuse program at a site certified by the Department of Mental Health.

(g) The court shall have the discretion to rule that a first offense of this subsection by a person under the age of twenty-one (21) years shall be nonadjudicated. Such person shall be eligible for nonadjudication only once. The Department of Public Safety shall maintain a confidential registry of all cases which are nonadjudicated as provided in this paragraph. A judge who rules that a case is nonadjudicated shall forward such ruling to the Department of Public Safety. Judges and prosecutors involved in implied consent violations shall have access to the confidential registry for the purpose of determining nonadjudication eligibility. A record of a person who has been nonadjudicated shall be maintained for five (5) years or until such person reaches the age of twenty-one (21) years. Any person whose confidential record has been disclosed in violation of this paragraph shall have a civil cause of action against the person and/or agency responsible for such disclosure.

(4) DUI test refusal. In addition to the other penalties provided in this section, every person refusing a law enforcement officer's request to submit to a chemical test of his breath as provided in this chapter, or who was unconscious at the time of a chemical test and refused to consent to the introduction of the results of the test in any prosecution, shall suffer an additional suspension of driving privileges as follows:

The Commissioner of Public Safety or his authorized agent shall suspend the driver's license or permit to drive or deny the issuance of a license or permit to the person as provided for first, second and third or subsequent offenders in subsection (2) of this section. The suspension shall be in addition to any suspension imposed pursuant to subsection (1) of Section 63-11-23. The minimum suspension imposed under this subsection shall not be reduced and no prosecutor is authorized to offer a reduction of such the suspension as part of a plea bargain.

(5) Aggravated DUI. Every person who operates any motor vehicle in violation of the provisions of subsection (1) of this section and who in a negligent manner causes the death of another or mutilates, disfigures, permanently disables or destroys the tongue, eye, lip, nose or any other limb, organ or member of another shall, upon conviction, be guilty of a separate felony for each such death, mutilation, disfigurement or other injury and shall be committed to the custody of the State Department of Corrections for a period of time of not less than five (5) years and not to exceed twenty-five (25) years for each such death, mutilation, disfigurement or other injury, and the imprisonment for the second or each subsequent conviction, in the discretion of the court, shall commence either at the termination of the imprisonment for the preceding conviction or run concurrently with the preceding conviction. Any person charged with causing the death of another as described in this subsection shall be required to post bail before being released after arrest.

(6) DUI citations. Upon conviction of any violation of subsection (1) of this section, the trial judge shall sign in the place provided on the traffic ticket, citation or affidavit stating that the person arrested either employed an attorney or waived his right to an attorney after having been properly advised. If the person arrested employed an attorney, the name, address and telephone number of the

attorney shall be written on the ticket, citation or affidavit. The judge shall cause a copy of the traffic ticket, citation or affidavit, and any other pertinent documents concerning the conviction, to be sent to the Commissioner of Public Safety. A copy of the traffic ticket, citation or affidavit and any other pertinent documents, having been attested as true and correct by the Commissioner of Public Safety, or his designee, shall be sufficient proof of the conviction for purposes of determining the enhanced penalty for any subsequent convictions of violations of subsection (1) of this section.

(7) Out-of-state prior convictions. Convictions in other states of violations for driving or operating a vehicle while under the influence of an intoxicating liquor or while under the influence of any other substance that has impaired the person's ability to operate a motor vehicle occurring after July 1, 1992, shall be counted for the purposes of determining if a violation of subsection (1) of this section is a second, third or subsequent offense and the penalty that shall be imposed upon conviction for a violation of subsection (1) of this section.

(8) Charging of subsequent offenses. For the purposes of determining how to impose the sentence for a second, third or subsequent conviction under this section, the indictment shall not be required to enumerate previous convictions. It shall only be necessary that the indictment state the number of times that the defendant has been convicted and sentenced within the past five (5) years under this section to determine if an enhanced penalty shall be imposed. The amount of fine and imprisonment imposed in previous convictions shall not be considered in calculating offenses to determine a second, third or subsequent offense of this section.

(9) License eligibility for underage offenders. Any person under the legal age to obtain a license to operate a motor vehicle convicted under this section shall not be eligible to receive a driver's license until the person reaches the age of eighteen (18) years.

(10) License suspensions to run consecutively. Suspension of driving privileges for any person convicted of violations of subsection (1) of this section shall run consecutively.

(11) Ignition interlock. The court may order the use of any ignition-interlock device as provided in Section 63-11-31. The court shall make specific findings that an ignition-interlock device has been ordered.

(12) DUI child endangerment. A person who violates subsection (1) of this section while transporting in a motor vehicle a child under the age of sixteen (16) years is guilty of the separate offense of endangering a child by driving under the influence of alcohol or any other substance which has impaired the person's ability to operate a motor vehicle. The offense of endangering a child by driving under the influence of alcohol or any other substance which has impaired such the person's ability to operate a motor vehicle shall not be merged with an offense of violating subsection (1) of this section for the purposes of prosecution and sentencing. An offender who is convicted of a violation of this subsection shall be punished as follows:

(a) A person who commits a violation of this subsection which does not result in the serious injury or death of a child and which is a first conviction shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than One Thousand Dollars ($ 1,000.00) or shall be imprisoned

for not more than twelve (12) months, or both;

(b) A person who commits a violation of this subsection which does not result in the serious injury or death of a child and which is a second conviction shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than One Thousand Dollars ($ 1,000.00) nor more than Five Thousand Dollars ($ 5,000.00) or shall be imprisoned for one (1) year, or both;

(c) A person who commits a violation of this subsection which does not result in the serious injury or death of a child and which is a third or subsequent conviction shall be guilty of a felony and, upon conviction, shall be fined not less than Ten Thousand Dollars ($ 10,000.00) or shall be imprisoned for not less than one (1) year nor more than five (5) years, or both; and

(d) A person who commits a violation of this subsection which results in the serious injury or death of a child, without regard to whether the offense was a first, second, third or subsequent offense shall be guilty of a felony and, upon conviction, shall be punished by a fine of not less than Ten Thousand Dollars ($ 10,000.00) and shall be imprisoned for not less than five (5) years nor more than twenty-five (25) years.

(13) (a) Any person who, on or before June 30, 2014, was convicted under subsection (2) of this section of a first offense of driving under the influence may petition the circuit court of the county in which the conviction was had for an order to expunge the record of the conviction. Expunction under this subsection will only be available to a person:

(i) Who has successfully completed all terms and conditions of the sentence imposed for the conviction;

(ii) Who did not refuse to submit to a test of his blood or breath;

(iii) Whose blood alcohol concentration tested below sixteen one-hundredths percent (.16%) if test results are available;

(iv) Who has not been convicted of or have pending any other offense of driving under the influence; and

(v) Who has provided the court with justification as to why the conviction should be expunged.

(b) A person is eligible for only one (1) expunction under this subsection, and the Department of Public Safety shall maintain a confidential registry of all cases of expunction under this subsection for the sole purpose of determining a person's eligibility as a first-offender under this section.

(c) The court in its order of expunction shall state in writing the justification for which the expunction was granted and forward the order to the Department of Public Safety within five (5) days of the entry of the order.

HISTORY: SOURCES: Laws, 1981, ch. 491, § 6; Laws, 1983, ch. 466, §§ 7, 13; Laws, 1989, ch.

565, § 1; Laws, 1991, ch. 480, § 6; Laws, 1992, ch. 500, § 1; Laws, 1994, ch. 340, § 4; Laws, 1995, ch. 540, § 1; Laws, 1996, ch. 527, § 11; Laws, 1998, ch. 505, § 2; Laws, 2000, ch. 542, § 3; Laws, 2002, ch. 367, § 1; Laws, 2004, ch. 503, § 1; Laws, 2007, ch. 438, § 1; Laws of 2012, ch. 510, § 1; Laws, 2013, ch. 489, § 1, eff from and after July 1, 2014.

NOTES: JOINT LEGISLATIVE COMMITTEE NOTE. --Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected references appearing in the amendments made to this section by § 1 of ch. 510, Laws of 2012. The references to "Section 63-11-30(1)" and "Section 63-11-30(2)(a)" were changed to "subsection (1) of this section" and "subsection (2)(a) of this section", respectively, throughout. The Joint Committee ratified these corrections at its August 16, 2012 meeting.

EDITOR'S NOTE. --Laws, 1981, ch. 491, § 15, provides as follows:

"SECTION 15. Prosecutions, convictions and penalties for violations which occurred prior to the effective date of this act under laws amended or repealed by this act, or suspensions or denials of driver's licenses or permits made pursuant to laws amended or repealed by this act, shall not be affected or abated by the provisions of this act".

Laws, 1983, ch. 466, § 12, provides as follows:

"SECTION 12. Prosecutions, convictions and penalties for violations which occurred prior to July 1, 1983, under laws amended by this act, and suspensions or denials of driver's licenses, permits or privileges made pursuant to laws amended by this act, shall not be affected or abated by the provisions of this act. In addition, convictions which occurred prior to July 1, 1983, under laws amended by this act shall be counted for the purposes of determining the penalties which shall be imposed on any person convicted for a second or subsequent offense under the provisions of the laws amended by this act."

Laws, 1994, ch. 340, § 6, as amended by Laws, 1995, ch. 540, § 5, provides as follows:

"SECTION 6. Sections 2 and 3 of this act shall take effect and be in force from and after passage. Section 4 of this act shall take effect and be in force from and after the passage of House Bill No. 438, 1995 Regular Session [Laws, 1995, ch. 540]."

AMENDMENT NOTES. --The 2002 amendment substituted "eight one-hundredths percent (.08%)" for "ten one-hundredths percent (.10%)" in (1).

The 2004 amendment, in (2)(c), substituted "shall serve" for "shall be imprisoned" and "in the custody of the Department of Corrections; provided, however, that for any such offense which does not result in serious injury or death to any person, any sentence of incarceration may be served in the county jail rather than in the State Penitentiary at the discretion of the circuit court judge" for "in the State Penitentiary" in the first sentence; substituted "The court in the county" for "The circuit court having jurisdiction in the county" in the second paragraph of (3)(b); and in (5), substituted "be guilty of a separate felony for each such death, mutilation, disfigurement or other injury" for "be guilty of a felony" and added the language following "(25) years" in the first sentence.

The 2007 amendment deleted "provided, however, in no event shall such period of suspension exceed one (1) year" from the end of the next-to-last sentence in the first paragraph of (2)(a).

The 2012 amendment substituted "63-1-216" for "63-1-83" at the end of (2)(a); and added (12).

The 2013 amendment, effective July 1, 2014, rewrote the section to provide that persons convicted of DUI will only be allowed to operate a vehicle equipped with an ignition-interlock device, to

provide for an ignition-interlock-restricted driver's license, to delete hardship provisions, to provide for nonadjudication and to provide for the expunction of certain convictions.

CROSS REFERENCES. --Uniform Controlled Substances Law, see §§ 41-29-101 et seq.

Juvenile names and addresses of those who violate this section as public records, see § 43-21-261.

Required order denying a driver's license and driving privileges for a child adjudicated delinquent for an offense under § 63-11-30, see § 43-21-605.

Guaranteed arrest bond certificate in lieu of cash bail for certain traffic violations, see § 63-9-27.

Warnings of consequences of refusal to submit to chemical tests, see § 63-11-5.

Requirement that person who refuses to submit to chemical test be informed by law enforcement officer that such refusal shall subject such person to penalties provided by this section, see § 63-11-21.

Review by commissioner of public safety of confiscation of license of driver who refused to submit to chemical test, see § 63-11-23.

Finality of commissioner's action in suspending or denying driving privilege of one convicted under this section, see § 63-11-26.

Assessments imposed upon violation of this section to fund Mississippi Alcohol Safety Education Program, see § 63-11-32.

Bond forfeiture operating, for purposes of this section, as a conviction, see § 63-11-37.

Duty of trial judge, upon conviction of driver under this section, to mail copy of abstract of court record to the commissioner of public safety, see § 63-11-37.

Forfeiture of vehicle seized for violation of this chapter, see § 63-11-49.

Petition for forfeiture of vehicle seized for violation of implied consent law, see § 63-11-51.

Funds derived from seized and forfeited vehicles to be deposited in special fund, see § 63-11-53.

Prohibition on suspension by justice courts of fines imposed under the Implied Consent Law, see § 99-19-25.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of Title 63, see § 99-19-73.

JUDICIAL DECISIONS

1. IN GENERAL.

To be guilty of "operating" a motor vehicle while under the influence of drugs or alcohol, or with an illegally high blood alcohol content, a person must be shown to have driven the vehicle while in that condition by direct proof of reasonable inferences; therefore, defendant's conviction was reversed because it was insufficient to prove "operating" by showing that defendant was intoxicated and sitting behind the wheel of a parked car that was out of gas. Lewis v. State, 831 So. 2d 553 (Miss. Ct. App. 2002).

Subsection (5) does not limit its coverage to those specific parts of the body listed; the use of the phrase includes "any other limb, organ or member of another" person's body permits the application of the subsection to parts of the body other than those specifically listed. Crowley v. State, 791 So. 2d 249 (Miss. Ct. App. 2000).

Disfigurement is not an essential element of the crime of driving under the influence of intoxicating liquor. Harris v. State, 757 So. 2d 195 (Miss. 2000).

Prosecution of defendant for violating sections of statute prohibiting driving under influence of intoxicating liquor and driving with blood alcohol level of .10% or more was not improper, as

charges were not separate crimes but were different methods of establishing same offense, notwithstanding assertion that charges could be defended differently. Young v. City of Brookhaven, 693 So. 2d 1355 (Miss. 1997).

In a prosecution for DUI maiming under § 63-11-30, the evidence was sufficient to support a finding that the defendant's negligence caused mutilation, disfigurement, or permanent disability of another where his negligence was evidenced by testimony regarding the speed of his vehicle and his failure to stop for a red light, and the victim's fractured pelvis and resulting limp were evidence that the defendant's negligence caused disfigurement of another. Holloman v. State, 656 So. 2d 1134 (Miss. 1995).

In a prosecution for DUI manslaughter under § 63-11-30, the evidence was sufficient to support a finding that the defendant's culpable negligence caused the death of another where evidence was presented regarding the speed of the defendant's vehicle and his failure to attempt to stop for a red light, and the victim was killed as a result of the ensuing collision. Holloman v. State, 656 So. 2d 1134 (Miss. 1995).

The language "chemical test or test of his breath," as provided in §§ 63-11-5 and 63-11-30, contemplates the use of an intoxilyzer machine as a proper means of measuring alcohol content of the blood; as long as accuracy, reliability, and all other factors questioning the competency of the test as proof of intoxication are complied with by the administering officers, the proof thereunder is admissible. Fulton v. City of Starkville, 645 So. 2d 910 (Miss. 1994).

The statutes under the Implied Consent Law allow not only a chemical test or tests of a person's breath, but also other tests of a person's blood or urine for determining alcoholic content; all 3 methods-breath, blood and urine tests-are valid tests for determining alcoholic content in a person's body which would impair that person's ability to operate a motor vehicle. Fulton v. City of Starkville, 645 So. 2d 910 (Miss. 1994).

The crime of aggravated DUI proscribed in § 63-11-30(4) is a lesser included offense necessarily encompassed under the crime of manslaughter by culpable negligence set forth in § 97-3-47. Mayfield v. State, 612 So. 2d 1120 (Miss. 1992).

2. CONSTITUTIONALITY.

The statute does not violate the equal protection clause of the Fourteenth Amendment to the United States Constitution, notwithstanding that persons above and below the age of 21 are treated differently under the statute, since the distinction made is rationally related to the legitimate governmental ends of protecting public safety and prohibiting under-age drinking and driving. Mason v. State, 781 So. 2d 99 (Miss. 2000).

Subsection (1)(a) of this section does not fail to adequately advise citizens as to how much an individual may drink without subjection to criminal penalties; nor does it fail to provide law enforcement officers with adequate guidance in its enforcement; thus, it is not unconstitutionally vague. Leuer v. City of Flowood, 744 So. 2d 266 (Miss. 1999).

The fact that the statute carries a criminal sanction greater than that for manslaughter creates no constitutional infirmity. Wilkerson v. State, 731 So. 2d 1173 (Miss. 1998).

Section 63-11-30, which imposes a maximum 5-year penalty for the operation of a vehicle in violation of the implied consent law coupled with negligently causing the death or mutilation of another, is not arbitrary and does not constitute cruel and unusual punishment. Banks v. State, 525 So. 2d 399 (Miss. 1988).

3. CONSTRUCTION.

Miss. Code Ann. § 63-11-30(1) distinguishes the charge of driving while under the influence of intoxicating liquor from that of driving while under the influence of another substance that impairs driving ability. Given the distinction in statutory language, where a defendant is charged with driving while under the influence of intoxicating liquor, the State is not obligated to offer proof of impairment of a defendant's driving ability, only proof of his driving under the influence of intoxicating liquor. Christian v. State, 859 So. 2d 1068 (Miss. Ct. App. 2003).

Inmate's felony conviction under Miss. Code Ann. § 63-11-30(2)(c) was proper, where the inmate's two previous driving-under-the-influence convictions occurred in Georgia; Miss. Code Ann. § 63-11-30(7) permitted the use of out-of-state convictions as predicate offenses under Miss. Code Ann. § 63-11-30(2)(c). Atwell v. State, 848 So. 2d 190 (Miss. Ct. App. 2003).

Statute contained no requirement that the negligence had to be caused by the alcohol; a conviction merely required a negligent act, from which death or injury resulted, simple negligence was enough to support a conviction. Murphy v. State, 798 So. 2d 609 (Miss. Ct. App. 2001), writ of certiorari denied by 537 U.S. 1125, 123 S. Ct. 895, 154 L. Ed. 2d 809, 2003 U.S. LEXIS 137, 71 U.S.L.W. 3472 (2003).

Subsection (5), pertaining to the death or disfigurement of another, does not require that the negligence of the defendant must be caused by his consumption of alcohol. Ware v. State, 790 So. 2d 201 (Miss. Ct. App. 2001).

Statute providing penalties for operation of vehicle while under influence of intoxicating liquor or other substance provides only for concurrent suspension periods for multiple offenses; time of license suspension begins to run when Commissioner of Public Safety receives abstract of judgment and issues order of suspension, regardless of whether some other period of suspension is also running. State, Dep't of Pub. Safety v. Prine, 687 So. 2d 1116 (Miss. 1996).

Circuit court had subject matter jurisdiction over motorist's petition for reduction of driver's license suspension imposed for four violations of prohibition against operation of vehicle while under influence; petition claimed hardship and asserted that motorist had completed alcohol course, which may have been "treatment" approved by Department of Mental Health. State, Dep't of Pub. Safety v. Prine, 687 So. 2d 1116 (Miss. 1996).

Simple negligence is sufficient for a conviction pursuant to § 63-11-30(4), as the statute requires only negligence, not gross or culpable negligence. Holloman v. State, 656 So. 2d 1134 (Miss. 1995).

Subsection (4) of § 63-11-30 imposes criminal liability for the negligent operation of a motor vehicle which causes death or injury to another person, subject to the satisfaction of a condition arising out of the conjunctive integration, by subsection (4), of the provisions of subsection (1) of that same statute, making imposition of the penalty for a violation of the statute dependent upon the existence of a concurrent violation of subsection (1) and subsection (4); accordingly, § 63-11-30 imposes criminal liability only if the injury to, or death of, the victim was caused by the defendant's negligent operation of a motor vehicle "while intoxicated." Matter of Slocum v. Jolly, 637 So. 2d 834 (Miss. 1994).

4. CHARGING AFFIDAVIT OR INDICTMENT.

Indictment for felony driving under the influence in violation of Miss. Code Ann. § 63-11-30(1)(c) was sufficient under Miss. Unif. Cir. & Cty. R. 7.06, because it fully notified defendant of the nature and cause of the accusations against defendant. While the indictment did not specifically state .08 percent, the indictment (1) stated that defendant operated a vehicle while having two one-hundredths

percent or more by weight volume of alcohol in defendant's blood; (2) stated that defendant feloniously drove or otherwise operated a vehicle while under the influence of an intoxicating liquor; (3) was headed Felony DUI MCA Section 63-11-30(1)(c); and (4) clearly listed defendant's previous convictions for DUI, which should have put defendant on notice that the State of Mississippi was seeking an enhanced penalty. Winters v. State, 52 So. 3d 1172 (Miss. 2010).

Defendant's conviction for his third DUI offense within five years, under Miss. Code Ann. § 63-11-30(2)(c), was appropriate because the indictment clearly notified defendant of the State's allegation that he had a .08 percent alcohol content in his blood. Thus, the indictment was legally sufficient. Nelson v. State, 69 So. 3d 50 (Miss. Ct. App. 2011).

Any error that resulted from an allegedly insufficient indictment for felony driving under the influence causing death or disfigurement, in violation of Miss. Code Ann. § 63-11-30(5) (Supp. 2010), was harmless because defendant had fair notice and an opportunity to prepare a defense. While the indictment did not allege a specific basis for defendant's negligence, the appellate court specifically stated that it was not making a finding of insufficiency. Regardless, any finding of insufficiency would have been harmless because discovery showed the possibility to two specific negligent acts: driving on the wrong side of the road and speeding. Taylor v. State, 94 So. 3d 298 (Miss. Ct. App. 2011), writ of certiorari denied by 96 So. 3d 732, 2012 Miss. LEXIS 371 (Miss. 2012).

Indictment, which was amended from four counts to one count, of aggravated DUI, Miss. Code Ann. § 63-11-30(5), was proper even though a defendant caused four deaths. Lepine v. State, 10 So. 3d 927 (Miss. Ct. App. 2009).

Traffic citation issued to defendant constituted a sworn affidavit and thus provided jurisdiction to both a municipal court and a circuit court to hear a charge of DUI despite a failure to include a court date as required by Miss. Code Ann. § 63-9-21(3)(c), because defendant had actual knowledge of the date and the citation had been amended to include it. Wildmon v. City of Booneville, 980 So. 2d 304 (Miss. Ct. App. 2007), writ of certiorari denied by 979 So. 2d 691, 2008 Miss. LEXIS 188 (Miss. 2008).

Citation charging defendant with driving under the influence of intoxicating liquor in violation of Miss. Code Ann. § 63-11-30 was not defective because it listed the incorrect municipal court address; Miss. Code Ann. § 63-9-21(3)(c) does not require that the address of the municipal court be contained on the citation. Loveless v. City of Booneville, 972 So. 2d 723 (Miss. Ct. App. 2007), writ of certiorari dismissed by 973 So. 2d 244, 2008 Miss. LEXIS 2 (Miss. 2008).

Citation charging defendant with driving under the influence of intoxicating liquor indicated an arraignment date, but did not indicate whether it would be a.m. or p.m.; the omission did not render the citation defective under Miss. Code Ann. § 63-9-21(3)(c). Loveless v. City of Booneville, 972 So. 2d 723 (Miss. Ct. App. 2007), writ of certiorari dismissed by 973 So. 2d 244, 2008 Miss. LEXIS 2 (Miss. 2008).

Fact that an older citation form was issued to defendant in a DUI case did not mean that it was insufficient just because it was not a uniform traffic ticket since the issuing municipality had obtained new tickets; moreover, the law applicable to defendant's case involving the standards for operators of commercial vehicles had not changed. Scott v. City of Booneville, 962 So. 2d 698 (Miss. Ct. App. 2007), writ of certiorari denied by 968 So. 2d 948, 2007 Miss. LEXIS 637 (Miss. 2007).

That an indictment's caption identified the charge as "driving under the influence (DUI) manslaughter" rather than "DUI negligent death statute," and referenced the wrong subsection of

Miss. Code Ann. § 63-11-30, was immaterial, as the indictment made it clear that the inmate was charged with causing the death of his passenger while feloniously and negligently operating a vehicle under the influence of intoxicating liquor, and his guilty plea waived all non-jurisdictional defects in the indictment. Turner v. State, 864 So. 2d 288 (Miss. Ct. App. 2003), writ of certiorari denied by 864 So. 2d 282, 2004 Miss. LEXIS 35 (Miss. 2004).

Because the indictment charged defendant with operating "a motor vehicle while under the influence of intoxicating liquor," which was the language of the offense codified at Miss. Code Ann. § 63-11-30(1)(a), the statement adequately informed defendant of the elements that the State was required to prove and the indictment was sufficient as required by Miss. Const. art. 3, § 27. Harris v. State, 830 So. 2d 681 (Miss. Ct. App. 2002), writ of certiorari denied by 842 So. 2d 578, 2003 Miss. LEXIS 323 (Miss. 2003).

Because the indictment gave clear notice that the charge was operating "a motor vehicle while under the influence of intoxicating liquor," in violation of Miss. Code Ann. § 63-11-30(1)(a), it was not fatally flawed by the inclusion of the surplus language that defendant "refused to submit to a chemical test of his breath"; the deletion of the surplus language from jury instruction was not an error. Harris v. State, 830 So. 2d 681 (Miss. Ct. App. 2002), writ of certiorari denied by 842 So. 2d 578, 2003 Miss. LEXIS 323 (Miss. 2003).

When a defendant is charged with subsequent violations of the statute, an indictment containing evidence of prior convictions should not be read to the jury and the jury should not be made aware of the defendant's prior convictions for the same crime as the one for which he is currently facing trial; the prior convictions are only relevant as to sentencing and should only be admitted during a separate sentencing phase. Strickland v. State, 784 So. 2d 957 (Miss. 2001).

An indictment charging DUI maiming was sufficient, notwithstanding the assertion that it failed to charge that the defendant's negligent driving caused the accident, where it actually read that the defendant in a negligent manner caused the mutilation of the victim's left arm, as the indictment gave sufficient notice of the charges pending against the defendant. McCollum v. State, 785 So. 2d 279 (Miss. 2001).

An indictment for driving under the influence of intoxicating liquor was valid where it included the proper code section and subsection number, provided the date, time, and location of the offense, and described the offense as driving negligently while intoxicated, striking the victim's vehicle and causing numerous injuries to her face and body. Harris v. State, 757 So. 2d 195 (Miss. 2000).

It was plain error to convict and sentence the defendant for a felony DUI conviction rather than a second offense misdemeanor where the first three convictions cited in the indictment occurred more than five years prior to the date of the incident at issue; therefore, the court would reverse and remand for re-sentencing in accordance with the provisions of subsection (2)(c) of this section in effect at the time of his arrest. Porter v. State, 749 So. 2d 250 (Miss. Ct. App. 1999).

A statutorily sufficient indictment, as measured by § 63-11-30(7), goes beyond the requirements of § 63-11-5(3) and § 63-9-21(3)(b); an indictment in compliance with these statutes and recent holdings by the court is sufficient to charge a defendant with felony DUI and a traffic ticket, citation, or affidavit is not required. Williams v. State, 708 So. 2d 1358 (Miss. 1998).

Failure to demur to the indictment for felony DUI does not waive a defect not otherwise curable by amendment. Porter v. State, 1998 Miss. App. LEXIS 948 (Miss. Ct. App. Nov. 10, 1998), opinion withdrawn by, substituted opinion at, remanded by 749 So. 2d 250, 1999 Miss. App. LEXIS 542 (Miss. Ct. App. 1999).

An indictment for DUI-third offense, a felony, was sufficient where not only were the convictions

and the courts in which they were tried enumerated on the face of the indictment, but the state went further and each abstract of court record showing the defendant's prior convictions for DUI were attached and made a part of the indictment. Weaver v. State, 713 So. 2d 860 (Miss. 1997).

Affidavit and indictment were sufficient to charge defendant with third offense felony driving under the influence (DUI), and thus, defendant's guilty plea was not invalid on that basis; indictment specifically set forth two prior offenses and convictions, and clearly designated dates, fines imposed, and location of record for each prior conviction. Drennan v. State, 695 So. 2d 581 (Miss. 1997).

5. BIFURCATION.

There is no requirement that the prosecution of a felony DUI comply with the guidelines for bifurcation found in Uniform Rules of Circuit and County Court Practice, Rule 11.03. Williams v. State, 708 So. 2d 1358 (Miss. 1998).

6. DEFENSES.

The fact that the defendant was unaware that his continued violations of the statute would subject him to a felony charge did not constitute a defense to DUI-third offense, a felony. Weaver v. State, 713 So. 2d 860 (Miss. 1997).

7. ADMISSIBILITY OF EVIDENCE.

In a case in which defendant was convicted of violating Miss. Code Ann. § 63-11-30(1)(c), the circuit court incorrectly applied the Porter decision. The Porter decision stood for the proposition that in a driving under the influence (DUI) per-se case, defendant could not offer evidence regarding whether or not he was under the influence which would impair his ability to drive a vehicle; the Porter decision did not hold that in a DUI-per-se case, evidence regarding the consumption of alcohol could not be introduced to prove whether or not defendant was at a certain blood alcohol concentration when he or she was driving a motor vehicle. Evans v. State, 25 So. 3d 1054 (Miss. 2010).

In a case in which defendant was convicted of violating Miss. Code Ann. § 63-11-30(1)(c), defendant could introduce evidence that her BAC was below the legal limit at the time she was driving; Porter v. State, 749 So. 2d 250 (Miss. Ct. App. 1999), which bars a defendant from introducing evidence that her alcohol consumption did not impair her driving, was inapplicable. Evans v. State, 25 So. 3d 1054 (Miss. 2010).

In a case in which defendant appealed his conviction and sentence for felony driving under the influence (DUI) as a habitual offender pursuant to Miss. Code Ann. § 99-19-81, he argued unsuccessfully that the trial court erred in failing to grant his pretrial motion to suppress evidence because: (1) the police chief had no authority to stop or arrest him, (2) he never committed any offense in the chief's jurisdiction, (3) his arrest occurred when the pursuit to make the arrest began, and (4) he had not committed any felony at that time. When the police chief began his pursuit, it was not a pursuit for the purpose of making an arrest, rather, it was a pursuit to give a courtesy warning; at the time defendant was arrested at his home, he had committed the crime of felony DUI, as well as the crime of driving with a suspended license. Delker v. State, 50 So. 3d 309 (Miss. Ct. App. 2009), affirmed by 50 So. 3d 300, 2010 Miss. LEXIS 529 (Miss. 2010).

Defendant's conviction for DUI, first offense, in violation of Miss. Code Ann. § 63-11-30(1)(c) was inappropriate because the circuit court judgment erred in excluding evidence of defendant's alcohol consumption and the expert testimony of a doctor. The evidence was especially relevant

because of the delay between the time that defendant was pulled over and the time that she was tested. Evans v. State, 25 So. 3d 1061 (Miss. Ct. App. 2008), affirmed by, remanded by 25 So. 3d 1054, 2010 Miss. LEXIS 18 (Miss. 2010).

Defendant's right to a fair trial was not violated by introducing evidence of prior DUI convictions during the guilt phase of a trial because they were an element of the crime of DUI third offense; the state was required to prove all the essential elements of the crime charged. Smith v. State, 950 So. 2d 1056 (Miss. Ct. App. 2007).

Where defendant was taken to a hospital after a two-car collision, the search warrant for a blood draw was invalid because: (1) the officer who requested the search warrant falsely stated in his affidavit that defendant had (a) refused to submit to an "analysis of his breath" after having been offered an opportunity to submit, and (b) been placed under arrest for driving while under the influence, although at that time he had not yet been arrested; and (2) there were no exigent circumstances present at the hospital that would have justified a blood test since defendant was not fleeing, and the officer obviously had time to secure a warrant, albeit an invalid one. As to the admissibility of defendant's statements about having consumed several beers, made to police at the scene of the accident, defendant did not claim that he was in custody at the time, and his statements clearly had probative value, thus the trial court did not abuse its discretion in allowing the statements to be admitted into evidence despite the defendant's argument that he was disoriented, confused, and suffering from shock and retrograde amnesia when he made the statements and they were therefore not reliable. Shaw v. State, 938 So. 2d 853 (Miss. Ct. App. 2005), writ of certiorari denied by 937 So. 2d 450, 2006 Miss. LEXIS 602 (Miss. 2006).

Where defendant was charged with and found guilty of felony driving under the influence of alcohol, the trial court did not err in denying defense counsel's motion to suppress evidence of defendant's blood alcohol results, because the warrant authorizing the blood alcohol test was valid. Inter alia, the officer observed defendant's slurred speech and staggered walk, and he noted that defendant's breath smelled of alcohol and defendant actually admitted to having drunk four beers that morning and was unable to recite the alphabet. Dove v. State, 912 So. 2d 1091 (Miss. Ct. App. 2005).

Where defendant was charged with and found guilty of felony driving under the influence of alcohol, the trial court did not err in denying defense counsel's motion to suppress evidence of defendant's prior DUI convictions because those prior arrests were elements of the crime with which defendant was charged. Moreover, the jury was given a cautionary instruction mandating that the prior DUI convictions were not to be considered as evidence against defendant. Dove v. State, 912 So. 2d 1091 (Miss. Ct. App. 2005).

In a criminal trial for a third offense of felony DUI, defendant waived his complaint that the State had failed to prove he had been convicted twice by the Tennessee courts of a violation of Mississippi law. Defendant had no objection to admission of certified abstracts of his prior convictions. Ali v. State, -- So. 2d --, 2004 Miss. App. LEXIS 1118 (Miss. Ct. App. Dec. 7, 2004), substituted opinion at, opinion withdrawn by 928 So. 2d 237, 2006 Miss. App. LEXIS 336 (Miss. Ct. App. 2006).

Defendant's prior DUI convictions were properly included at his trial for felony DUI where, since prior DUI convictions were necessary elements of felony DUI, any other holding would have precluded the State from proving an essential element of the crime, and the circuit court would have breached its duty to instruct the jury on all the essential elements of the crime charged should the prior felony convictions not have been included. Ward v. State, 881 So. 2d 316 (Miss. Ct. App. 2004).

Despite the circuit court's ruling on defendant's motion in limine, the jury further heard the arresting officer's testimony about the results of the portable breath test given at the time of the traffic stop, which was erroneously admitted without a specific limiting or cautionary instruction; further, there was substantial evidence contrary to the State's case, for example, no results were obtained from the Intoxilyzer 5000 tests. In addition, defendant seemed acutely aware of the consequences of mixing alcohol with the prescription medications defendant was taking, and defendant's physician testified that the symptoms of a sudden change in glucose levels in a diabetic could have been mistaken for intoxication. Given the erroneous admission of evidence barred by the motion in limine and the limited evidence supporting the jury's verdict, reversal and remand was required. Cannon v. State, 905 So. 2d 672 (Miss. Ct. App. 2004), reversed by 904 So. 2d 155, 2005 Miss. LEXIS 256, 17 A.L.R.6th 911 (Miss. 2005).

Public safety department printout of defendant's driving record was admissible under Miss. R. Evid. 803(8) after being certified as correct by the signature of the custodian of the records, and because the record was under seal, it was self-authenticated pursuant to Miss. R. Evid. 902(1); this printout met Miss. Code Ann. § 63-11-30(2)(c), which requires evidence of two prior driving under the influence convictions of defendant, and no prejudice resulted from the admission of the corroborating justice court record in this regard. Doolie v. State, 856 So. 2d 669 (Miss. Ct. App. 2003).

While medical science may not be able to inform the courts as to exactly what level of particular narcotics must be ingested to safely lead to the conclusion that the user is under the influence of the drug, the similar issue of whether a person is under the influence of alcohol has for many years been routinely submitted to the jury based on evidence other than scientific testing; such determinations can properly be based upon observed behavior and the common understanding of jurors that persons under the influence of certain chemical substances, whether alcohol or narcotics, behave in ways that are different from the average person and thus, there is no basis to draw a distinction between narcotic use and alcohol use and the appellate court declines to do so. Holloman v. State, 820 So. 2d 52 (Miss. Ct. App. 2002).

When a defendant is charged with subsequent violations of the statute, an indictment containing evidence of prior convictions should not be read to the jury and the jury should not be made aware of the defendant's prior convictions for the same crime as the one for which he is currently facing trial; the prior convictions are only relevant as to sentencing and should only be admitted during a separate sentencing phase. Strickland v. State, 784 So. 2d 957 (Miss. 2001).

Defendant's conviction for first-offense driving under the influence of alcohol, which was based on an intoxilyzer result, was reversed because the State failed to properly authenticate copies of a page from the intoxilyzer log book and the calibration certificate; the State was required to offer either the testimony of the calibrating officer, the original certificate of calibration, or a certified copy of the certificate as evidence of the machine's accuracy. Jones v. State, 798 So. 2d 592 (Miss. Ct. App. 2001).

The repeal of § 63-11-39(2) in 1991 combined with the 1983 amendment to this section nullified the defendant's argument that the trial court erred when it sustained the state's motion in limine and thus denied him the opportunity of offering evidence that his ingestion of alcohol had not impaired his ability to operate his pickup truck. Porter v. State, 749 So. 2d 250 (Miss. Ct. App. 1999).

The repeal of § 63-11-39(2) in 1991 combined with the 1983 amendment to § 63-11-30 nullified the defendant's argument that the trial court erred when it sustained the state's motion in limine and thus denied him the opportunity of offering evidence that his ingestion of alcohol had not impaired

his ability to operate his pickup truck. Porter v. State, 1998 Miss. App. LEXIS 948 (Miss. Ct. App. Nov. 10, 1998), opinion withdrawn by, substituted opinion at, remanded by 749 So. 2d 250, 1999 Miss. App. LEXIS 542 (Miss. Ct. App. 1999).

In a prosecution for third offense driving under the influence of alcohol, the court properly denied a motion in limine to prevent evidence of his two prior convictions of DUI from being presented to the jury. Smith v. State, 736 So. 2d 381 (Miss. Ct. App. 1999).

The state must prove the prior charges and convictions of the defendant in order to meet its burden and obtain a conviction for a felony DUI, and, therefore, the trial judge properly admitted evidence of the defendant's prior convictions. Weaver v. State, 713 So. 2d 860 (Miss. 1997).

Improper admission of evidence regarding use of horizontal gaze nystagmus (HGN) test, in which person's eye movements are evaluated as potential evidence of intoxication, in prosecution for driving while intoxicated, was harmless error, in view of overwhelming evidence against defendant. Young v. City of Brookhaven, 693 So. 2d 1355 (Miss. 1997).

A defendant's prior convictions were admissible at the sentencing hearing for enhancement of his punishment under § 63-11-30, in spite of his argument that these convictions could not be used because they occurred when he was without counsel, since lack of counsel does not render a conviction arising from a guilty plea "irregular" or otherwise unfit for purposes of sentence enhancement. Ghoston v. State, 645 So. 2d 936 (Miss. 1994).

In a prosecution for driving a motor vehicle while under the influence of intoxicating liquor, the defendant's statement to a police officer that the breathalyzer machine would "probably show I'm in a coma" was essentially a confession that the defendant was drunk, and was therefore admissible into evidence as a voluntary statement where it was made spontaneously after the defendant had been given the Miranda warnings. Ricks v. State, 611 So. 2d 212 (Miss. 1992).

In a prosecution for driving a motor vehicle while under the influence of intoxicating liquor, the admission into evidence under § 63-11-41 of the defendant's refusal to take a breathalyzer test did not violate the Fifth Amendment to the United States Constitution and Article 3, § 26 of the Mississippi Constitution, even though the defendant was not specifically warned that his refusal could be admitted into evidence against him; the penalty of introducing a refusal serves an important state interest in encouraging defendants to submit to a chemical test, and as the refusal is physical instead of testimonial, its introduction into evidence violates neither the Fifth Amendment nor § 26. Ricks v. State, 611 So. 2d 212 (Miss. 1992).

In a prosecution for driving under the influence of intoxicating liquor (DUI) pursuant to § 63-11-30, 3 prior DUI convictions and one conviction for driving while license suspended were admissible for the purpose of enhancing the defendant's punishment under § 63-11-30 and could be considered for any lesser administrative sanctions included in the statute, such as suspension of one's driver's license, even though the city could not show that the defendant had been represented by counsel or had knowingly and intelligently waived his right to counsel with respect to these previous convictions, where the prior convictions were constitutionally valid in and of themselves; to find otherwise would have the illogical effect of penalizing those defendants who do obtain counsel in misdemeanor cases and of finding a prior constitutionally valid misdemeanor conviction unconstitutional in certain future instances. Sheffield v. City of Pass Christian, 556 So. 2d 1052 (Miss. 1990).

8. --TEST RESULTS.

In an aggravated driving under the influence case under Miss. Code Ann. § 63-11-30, even if the

State acted in bad faith in disposing of a blood sample a week after a motion to compel its production was filed, defendant's due process rights were not violated when the trial court denied defendant's motion to dismiss the indictment and allowed the State to introduce the results from the blood analysis at trial because defendant was unable to show that the blood sample had exculpatory value that was apparent before it was destroyed where the sample was tested four times and, even giving defendant the benefit of the lowest result from the four tests, defendant's blood-alcohol level was well over the legal limit. Harness v. State, 58 So. 3d 1 (Miss. 2011).

Defendant's conviction for DUI maiming in violation of Miss. Code Ann. § 63-11-30(5) was proper because he consented to a blood sample, he never objected to the introduction of the blood-analysis evidence during the course of the testimony by a witness with the Mississippi Crime Laboratory, defendant did not object to the admission of testimony by a doctor regarding the amount of other substances found in the blood sample and the impairing effects of the other substances, defendant's objection made at trial did not state with requisite specificity the basis for the objection to the admission of the testimony, and a deputy was permitted to testify as to what he personally observed concerning defendant's written consent to the blood test. Irby v. State, -- So. 3d --, 2010 Miss. LEXIS 423 (Miss. Aug. 12, 2010), opinion withdrawn by 2010 Miss. LEXIS 650 (Miss. Dec. 9, 2010), substituted opinion at 49 So. 3d 94, 2010 Miss. LEXIS 638 (Miss. 2010).

Proper predicate was laid for the introduction of the blood-alcohol-content test results showing that approximately two hours after the accident, a defendant had a blood-alcohol concentration of .09 percent, where the results were admitted into evidence at trial through a forensic toxicologist who tested the sample and where there was extensive testimony about the forensic toxicologist's qualifications to perform the tests and about the lab's procedures and protocols. Lepine v. State, 10 So. 3d 927 (Miss. Ct. App. 2009).

In an aggravated driving under the influence case, a denial of defendant's motion for a new trial or motion for a directed verdict was proper because the chain of custody for a blood sample was properly shown from the testimony of those individuals who handled the samples; moreover, defendant offered no evidence of tampering or substitution of the evidence. Vaughn v. State, 972 So. 2d 56 (Miss. Ct. App. 2008).

Motion to suppress was properly denied because defendant's Fourth Amendment rights were not violated in a case involving aggravated driving under the influence because there was probable cause for a blood sample taken from defendant based on his behavior after an accident, the fact that he smelled of alcohol and marijuana, and the fact that such items were observed in his car; the blood draw also fell under the exceptions of a search incident to arrest and exigent circumstances. Therefore, the denial of defendant's motion for a new trial or motion for a directed verdict was proper. Vaughn v. State, 972 So. 2d 56 (Miss. Ct. App. 2008).

Miss. Code Ann. § 63-11-8, which mandates that a test for determining blood alcohol content be performed on the operator of any motor vehicle involved in an accident resulting in death within two hours if possible, was not applicable where defendant was charged under Miss. Code Ann. § 63-11-30(5) for aggravated DUI with injury. Smith v. State, 942 So. 2d 308 (Miss. Ct. App. 2006).

Where defendant was tried for a third offense of felony DUI, the trial court did not err in admitting into evidence the results of an Intoxilyzer 5000 breath test showing that defendant's blood alcohol level was 0.090%. The Intoxilyzer result was just one of several pieces of evidence the prosecution used to prove that defendant was "under the influence" as required by Miss. Code Ann. § 63-11-30(1)(a); an officer testified about the results of two field sobriety tests, the odor of an intoxicating beverage and the initial observation of defendant's driving. Ali v. State, -- So. 2d --,

2004 Miss. App. LEXIS 1118 (Miss. Ct. App. Dec. 7, 2004), substituted opinion at, opinion withdrawn by 928 So. 2d 237, 2006 Miss. App. LEXIS 336 (Miss. Ct. App. 2006).

Intoxilyzer results may be admitted into evidence if a proper foundation has been laid. McLaurin v. State, 882 So. 2d 268 (Miss. Ct. App. 2004).

The state cannot use the results of a horizontal gaze nystagmus (HGN) test to show that the defendant was under the influence of intoxicating liquor to prove the requisite elements of subsection (1)(a) and, furthermore, the state cannot attempt to introduce the HGN test as scientific evidence to show a defendant's degree of intoxication; however, the test can still be used as a field sobriety test to establish probable cause to administer the intoxilyzer. Graves v. State, 761 So. 2d 950 (Miss. Ct. App. 2000).

The defendant was entitled to reversal of his conviction and a new trial where the court improperly allowed the introduction of evidence of the horizontal gaze nystagmus test to show intoxication; the state's evidence of guilt was not so overwhelming as to render allowing the improper evidence harmless error. Holmes v. State, 740 So. 2d 952 (Miss. Ct. App. 1999).

Prior to admitting results of chemical analysis in prosecution for driving under the influence (DUI), court must determine that proper procedures were followed, that operator of machine was properly certified to perform test, and that accuracy of machine was properly certified. McIlwain v. State, 700 So. 2d 586 (Miss. 1997).

State laid sufficient predicate for accuracy of intoxilyzer results in prosecution for felony driving under the influence (DUI), despite failure to produce the original certificate attesting to machine's accuracy, where officer testified that he was certified with state crime lab to run simulator test on intoxilyzer to certify calibration on it. McIlwain v. State, 700 So. 2d 586 (Miss. 1997).

Horizontal gaze nystagmus (HGN) test, in which person's eye movements are evaluated as potential evidence of intoxication, was scientific test which was not generally accepted within scientific community and could not be used as scientific evidence to prove intoxication or as mere showing of impairment, in prosecution for driving while intoxicated, although test could be used to prove probable cause to arrest and administer intoxilyzer or blood test. Young v. City of Brookhaven, 693 So. 2d 1355 (Miss. 1997).

There was substantial compliance with § 63-11-19, and the trial judge did not err in admitting intoxilyzer test results into evidence in a prosecution for negligently causing injury while intoxicated under § 63-11-30, where the police dispatcher who administered the intoxilyzer test had attended a one-day school for intoxilyzer test operators conducted by the Mississippi Highway Patrol and had been issued a permit, she testified that she had administered the test "on hundreds," the intoxilyzer machine had been calibrated by someone from the Highway Safety Patrol a few days before the test was administered on the defendant, the dispatcher followed the checklist provided for machine operators, she told the defendant he had a right to refuse the test, the defendant blew into a mouthpiece attached to the machine until a bell rang, the printout card showed .19 percent, and the dispatcher testified that the defendant appeared to be intoxicated. Estes v. State, 605 So. 2d 772 (Miss. 1992).

A defendant's arrest for driving while intoxicated was legal, and therefore the subsequent intoxilyzer test was not tainted, even though the arresting officer did not observe the defendant driving, where the defendant admitted to the arresting officer that he had been driving an automobile which was involved in an accident, and the defendant was publicly intoxicated in the presence of the officer and others in violation of § 97-29-47. Goforth v. City of Ridgeland, 603 So. 2d 323 (Miss. 1992).

9. SUFFICIENCY OF EVIDENCE.

Although defendant produced evidence that his truck's power steering had been replaced, the manner in which he handled an incident he blamed on his power steering going out (failing to stop to inform anyone of the incident) supported a finding that defendant was under the influence at the time he hit mailboxes and a boat. Chapman v. State, 126 So. 3d 959 (Miss. Ct. App. 2013).

Evidence supported defendant's conviction of felony driving under the influence causing death because (1) surveillance videos showed that defendant consumed six beers at a casino in a two hour period; (2) defendant, upon leaving the casino, turned defendant's vehicle into an oncoming vehicle; (3) a passenger in the other vehicle was killed; (4) a police officer testified that defendant showed signs of intoxication; and (5) defendant's blood contained .14 percent concentration of alcohol. Andino v. State, 125 So. 3d 700 (Miss. Ct. App. 2013).

Sufficient evidence was presented to allow a reasonable and fair-minded juror to find that defendant operated a motor vehicle under circumstances indicating that he was impaired by alcohol because defendant testified that he had consumed alcohol on the day he was arrested, and the State presented testimony that several empty beer cans and a half-full beer can were found in his car and that he smelled like alcohol when he was pulled over. Young v. State, 119 So. 3d 309 (Miss. 2013).

There was not a sufficient factual basis, pursuant to Miss. Unif. Cir. & Cty. R. 8.04, to support defendant's guilty plea to driving under the influence (DUI) manslaughter and DUI mayhem because there was no factual basis that defendant had been driving in the county where the accident occurred, that defendant was impaired by controlled substances while defendant was driving, and that defendant performed a negligent act that caused one child's death and another child's serious bodily injury in an auto accident. Porter v. State, 126 So. 3d 68 (Miss. Ct. App. 2013).

Evidence supported defendant's driving under the influence conviction because defendant admitted to having been drinking, defendant's performance on field sobriety tests suggested that defendant was impaired, and a video of defendant at a police department waiting to take an Intoxilyzer breath exam depicted defendant as unsteady, eventually losing balance and falling off a stool, while defendant presented part of the video of what defendant alleged was a seizure, without any other support. Carlson v. City of Ridgeland, -- So. 2d --, 2013 Miss. App. LEXIS 474 (Miss. Ct. App. Aug. 6, 2013).

Evidence was sufficient to support defendant's driving under the influence conviction where two police officers smelled alcohol emitting from defendant's vehicle, defendant exhibited physical signs of impairment during field sobriety tests, and defendant refused to submit to an Intoxilyzer test, which was admissible pursuant to Miss. Code Ann. § 63-11-41. Lobo v. City of Ridgeland, -- So. 3d --, 2013 Miss. App. LEXIS 300 (Miss. Ct. App. May 28, 2013).

Evidence was sufficient to convict defendant of DUI, first offense, even without the results of a breathalyzer test, where the arresting officer testified defendant admitted to drinking five alcoholic beverages, he smelled like alcohol, his speech was slurred, he swayed while standing, and his eyes were bloodshot and watery. Ludwig v. State, 122 So. 3d 1229 (Miss. Ct. App. 2013).

Trial court did not err in denying defendant's motion for judgment notwithstanding the verdict because ample evidence was offered in the form of testimony from the sole testifying witness, a police officer, with regard to defendant's condition on the morning in question; the officer's observations of defendant during the field-sobriety tests were ample proof that defendant's ability to operate her motor vehicle had been impaired by her admitted consumption of alcohol. Huhn v. City of Brandon, 121 So. 3d 947 (Miss. Ct. App. 2013).

Evidence was sufficient to support defendant's conviction for driving under the influence maiming,

in violation of Miss. Code Ann. § 63-11-30(5), although defendant's blood sample was not positive for alcohol, where both a victim and a deputy testified that defendant smelled of alcohol, one of the victim's testified that defendant was driving in the wrong lane and an alarming speed, one of the victims suffered permanent disabilities as a direct result of the accident, and defendant's blood analysis revealed significant levels of alprazolam and hydrocodone. Irby v. State, 49 So. 3d 94 (Miss. 2010).

Evidence was sufficient to convict appellant of driving under the influence, under Miss. Code Ann. § 63-11-30(1)(a), (c), because appellant admitted to having several drinks that night, a portable breathalyzer test (PBT) indicated that appellant was probably intoxicated, a police officer testified that appellant displayed signs of intoxication while performing the field-sobriety tests, and the signs from the tests, the PBT results, and the videotape all corroborated most of the officer's testimony and supported his belief that appellant was intoxicated. Barrow v. State, 121 So. 3d 935 (Miss. Ct. App. 2013).

Although defendant argued that the prosecution failed to prove beyond a reasonable doubt that defendant's breath-alcohol content was .08 percent or greater at the time that defendant was driving, because a doctor provided retrograde-extrapolation testimony that defendant's blood-alcohol content would have been .03 percent at the time of the traffic stop of defendant, the county court judge acted within its discretion when it found that the doctor's testimony was not credible. McMurtry v. State, 105 So. 3d 395 (Miss. Ct. App. 2012).

Evidence was sufficient to support defendant's conviction for common law DUI under Miss. Code Ann. § 63-11-30(1)(a) (Rev. 2004) as it showed that defendant admitted to the officer who stopped his vehicle that he had drunk two beers while he was driving, that he also admitted that he had drunk liquor and beer earlier in the day, that the officer smelled a strong odor of alcohol coming from defendant and observed defendant's glassy eyes, and that defendant refused to field sobriety test and the chemical test. Evidence that defendant refused the chemical test was admissible pursuant to Miss. Code Ann. § 63-11-41 (Rev. 2004) and Miss. R. Evid. 402. Ellis v. State, 77 So. 3d 1119 (Miss. Ct. App. 2011), writ of certiorari denied en banc by 78 So. 3d 906, 2012 Miss. LEXIS 25 (Miss. 2012).

Sufficient evidence supported defendant's conviction for felony driving under the influence causing death or disfigurement, in violation of Miss. Code Ann. § 63-11-30(5) (Supp. 2010), where a witness testified that the witness and the victim were standing near the side of the road when defendant, who was intoxicated, left her lane of travel, drifted left into the opposite lane, and continued to drift left off of the road, where she hit and killed the victim. Taylor v. State, 94 So. 3d 298 (Miss. Ct. App. 2011), writ of certiorari denied by 96 So. 3d 732, 2012 Miss. LEXIS 371 (Miss. 2012).

Substantial evidence supported defendant's conviction for driving under the influence and causing the death of another under Miss. Code Ann. § 63-11-30(5), as defendant was exceeding the speed limit, defendant did not brake before the accident, and defendant's blood-alcohol level was over the legal limit. Beecham v. State, -- So. 3d --, 2010 Miss. App. LEXIS 667 (Miss. Ct. App. Dec. 14, 2010), opinion withdrawn by, substituted opinion at 108 So. 3d 402, 2011 Miss. App. LEXIS 642 (Miss. Ct. App. 2011).

Defendant's conviction for DUI maiming in violation of Miss. Code Ann. § 63-11-30(5) was appropriate because the overwhelming weight of the evidence supported a guilty verdict. The other driver testified that, as she drove over a hill, she saw defendant's truck in her lane driving toward her at an alarming speed, resulting in a collision; there was also testimony that defendant smelled of alcohol and although his blood sample was not positive for the presence of alcohol, it did test positive for other substances that affected one's ability to operate a motor vehicle. Irby v. State, --

So. 3d --, 2010 Miss. LEXIS 423 (Miss. Aug. 12, 2010), opinion withdrawn by 2010 Miss. LEXIS 650 (Miss. Dec. 9, 2010), substituted opinion at 49 So. 3d 94, 2010 Miss. LEXIS 638 (Miss. 2010).

Defendant's conviction for DUI, first offense, in violation of Miss. Code Ann. § 63-11-30(1)(a), was supported by the evidence because the circuit court did not err in considering evidence of the smell of alcohol and the presence of beer cans in defendant's truck; defendant admitted consuming at least "a couple" of beers. Knight v. State, 14 So. 3d 76 (Miss. Ct. App. 2009).

In defendant's trial for vehicular manslaughter while driving under the influence, a jury was presented with evidence that defendant's blood-alcohol concentration was three times the legal limit; testimony was presented from an officer that defendant admitted in an interview on the night of the accident that she believed her vehicle had crossed the centerline of the road just before the collision; and evidence was presented that there was no other reasonable cause of the victim's death. Hudspeth v. State, 28 So. 3d 600 (Miss. Ct. App. 2009), writ of certiorari denied by 27 So. 3d 404, 2010 Miss. LEXIS 89 (Miss. 2010).

Evidence was sufficient to sustain defendant's conviction under Miss. Code Ann. § 63-11-30 because, based on defendant's level of hydrocodone in her system, the State's expert opined that defendant had to have been impaired at the time of the accident. The expert testified that a person could be impaired at any dosage no matter how small, but that defendant's level of hydrocodone demonstrated significant impairment. Teston v. State, 44 So. 3d 977 (Miss. Ct. App. 2008), writ of certiorari dismissed by 44 So. 3d 969, 2010 Miss. LEXIS 520 (Miss. 2010).

Evidence was sufficient to convict defendant of three counts of driving under the influence of alcohol (DUI) maiming because (1) the State established that defendant consumed alcohol prior to the wreck and was drinking at the time of the wreck; (2) defendant swerved and crossed the center line immediately prior to the wreck; (3) several witnesses testified to the presence of alcohol, including beer cans and a partially consumed bottle of vodka in defendant's vehicle, and that the inside of his vehicle smelled of alcohol; and (4) four hours after the wreck, defendant's blood alcohol content was .07% Gilpatrick v. State, 991 So. 2d 130 (Miss. 2008).

Defendant's argument, in his motion for new trial and on appeal, that the verdict convicting him of felony driving under the influence was against the overwhelming weight of the evidence was without merit, because the appellate court had to accept the evidence which supported the verdict as true; the evidence included the testimony of one officer that defendant's speech was slurred and that he had poor balance, and the testimony of two other officers that his eyes were red and that he smelled of alcohol. Brooks v. State, 999 So. 2d 408 (Miss. Ct. App. 2008), writ of certiorari denied by 999 So. 2d 852, 2009 Miss. LEXIS 48 (Miss. 2009).

Evidence was sufficient for a rational jury to find defendant guilty of vehicular homicide beyond a reasonable doubt because the State presented evidence to show that defendant ran a stop sign; it was undisputed that the victim's death was a result of the collision with defendant, and defendant admitted to drinking that night. Moreover, officers discovered an open beer can on the floorboard of defendant's car, and his blood alcohol content was 0.22. Smith v. State, 981 So. 2d 1025 (Miss. Ct. App. 2008).

During a traffic stop, the officer smelled alcohol, defendant exhibited slurred speech, admitted he had been drinking, and the Breathalyzer showed that he was well above the legal limit; a second officer had to carry defendant to the patrol car. Despite conflicting testimony at trial, the evidence was sufficient to sustain defendant's conviction for driving under the influence of intoxicating liquor in violation of Miss. Code Ann. § 63-11-30(1). Ivy v. City of Louisville, 976 So. 2d 951 (Miss. Ct. App. 2008).

There was sufficient evidence to support a verdict of guilty of driving under the influence, first offense, under Miss. Code Ann. § 63-11-30(1), because (1) a circuit court found that there was sufficient, circumstantial evidence that defendant was operating a vehicle under § 63-11-30 because defendant admitted that he was headed home; (2) the circuit court accepted an officer's testimony that he watched defendant exit the vehicle from the driver's side, that he smelled alcoholic beverages, and that defendant displayed signs of intoxication, such as his slurred speech and unsteadiness on his feet; (3) it was a reasonable inference from the evidence presented that defendant had driven the car in violation of § 63-11-30; and (4) the results of an Intoxilyzer and defendant's behavior witnessed by the officer were admitted into evidence. Stuckey v. State, 975 So. 2d 271 (Miss. Ct. App. 2008).

Evidence was sufficient to sustain a conviction for operating a motor vehicle under the influence of alcohol because, upon arriving at the scene of the accident, a witness testified that defendant was the only individual present, defendant admitted that he was the driver of the truck, and both deputies concluded that defendant was driving under the influence based upon the witness's statement, the absence of any other occupants at the scene, the presence of scattered open beer cans, and the distinct scent of alcohol on defendant's breath. Murray v. State, 967 So. 2d 1222 (Miss. 2007).

Defendant's convictions for driving under the influence of an intoxicating liquor in violation of Miss. Code Ann. § 63-11-30(1)(a), careless driving, and driving without a seatbelt were appropriate because defendant failed to raise any of the issues he complained of on appeal in his motion for a directed verdict or new trial and because the facts of the case provided sufficient evidence to convict. Jones v. State, 958 So. 2d 840 (Miss. Ct. App. 2007).

Evidence was sufficient to convict defendant of DUI first offense because: (1) an officer observed marijuana on defendant's clothing, noted that defendant's eyes were bloodshot, and remarked that defendant appeared to be particularly nervous; (2) the officer testified that defendant stated that he had smoked marijuana a short time before the stop; (3) although defendant testified and gave a different account of the events, the court, as the fact finder, was entitled to believe whatever testimony it found most credible; and (4) nothing about the officer's allowing defendant to drive away from the scene affected whether defendant was actually under the influence when he was stopped initially. Beal v. State, 958 So. 2d 254 (Miss. Ct. App. 2007).

Where a police officer testified that he noticed a strong smell of alcohol coming from defendant, that defendant had glazed and bloodshot eyes, and his speech was slurred, and defendant also failed field sobriety tests, the evidence was sufficient to support defendant's conviction for driving under the influence of intoxicating liquor under Miss. Code Ann. § 63-11-30(1)(a). Loveless v. City of Booneville, 958 So. 2d 230 (Miss. Ct. App. 2007).

Where defendant's blood alcohol content was over the legal limit, and while there was no eyewitness testimony that defendant in fact drove the car that hit the victim, there was sufficient circumstantial evidence to convict defendant of a DUI homicide under Miss. Code Ann. § 63-11-30(1)(c) and (5) because: (1) the early morning time and rural location of the collision allowed the jury to form a reasonable inference that defendant drove the car that hit the victim; (2) the jury could have found based on the time and location that it was unlikely that defendant would have been walking in that area; (3) the jury could have reasonably inferred that defendant was at the scene of the collision because he drove one of the two cars involved in the collision and would not have been able to leave the scene of the accident; (4) the jury could have found that defendant's proximity to the collision and his status as the sole non-emergency personnel present indicated his involvement in the collision; (5) defendant told an officer that he could not remember how the collision happened,

not that he did not know how the collision occurred; (6) defendant never mentioned anyone else who could have possibly been driving; and (7) pursuant to Miss. R. Evid. 701, the officer testified that he concluded that defendant was driving based on his presence, the presence of emergency responders, and common sense. Travis v. State, 972 So. 2d 674 (Miss. Ct. App. 2007), writ of certiorari denied by 973 So. 2d 244, 2008 Miss. LEXIS 1 (Miss. 2008).

Miss. Code Ann. § 63-11-30(2)(c) requires that the state prove that the first and second offenses were "committed" within five years of the third offense, and the only way to establish this fact is for the state to introduce evidence of the date the first and second offenses were committed; evidence of only the conviction, which does not also contain the date the offense was committed, is not sufficient. Smith v. State, 950 So. 2d 1056 (Miss. Ct. App. 2007).

Because the state did not prove the date of offense for a prior DUI charge, a conviction for felony third offense DUI was not supported by the evidence since there was no proof that two prior convictions were committed within five years of the third offense; however, a remand was appropriate for sentencing under Miss. Code Ann. § 63-11-30(2)(b) since it was undisputed that defendant had violated § 63-11-30(1). Smith v. State, 950 So. 2d 1056 (Miss. Ct. App. 2007).

Trial court did not err in denying defendant's motion for a new trial after he was convicted of third offense felony driving under the influence, in violation of Miss. Code Ann. § 63-11-30(1)(a)(c), where a reasonable juror could have found defendant guilty based on the evidence presented; the arresting officers testified that they observed defendant unsteady on his feet, with red, watery eyes, a dazed stare, and slurred speech. Starkey v. State, 941 So. 2d 899 (Miss. Ct. App. 2006).

Defendant's motion for a new trial was properly denied where the state presented sufficient evidence from which a jury could reasonably conclude that he was under the influence of intoxicating liquor to the degree that his motor skills necessary to properly operate a vehicle were impaired; under Miss. Code Ann. § 63-11-30(1)(a) and (b), the state was not required to prove that he had a certain blood-alcohol content. Bates v. State, 950 So. 2d 220 (Miss. Ct. App. 2006).

Defendant's motion for a new trial on his driving under the influence charge was properly denied because a trooper's testimony, defendant's intoxilyzer test, and a uniform traffic ticket revealed that defendant registered a breath-alcohol content of 0.13 percent. McLendon v. State, 945 So. 2d 372 (Miss. 2006), writ of certiorari denied by 551 U.S. 1145, 127 S. Ct. 3008, 168 L. Ed. 2d 727, 2007 U.S. LEXIS 8338, 75 U.S.L.W. 3694 (2007).

Defendant's motion for judgment notwithstanding the verdict was properly denied because there was legally sufficient evidence for the trial court to find defendant guilty of DUI; it was established that defendant had a breath-alcohol content of 0.13 percent through the testimony of an officer, a printout from a completed intoxilyzer test, and a uniform traffic ticket. McLendon v. State, 945 So. 2d 372 (Miss. 2006), writ of certiorari denied by 551 U.S. 1145, 127 S. Ct. 3008, 168 L. Ed. 2d 727, 2007 U.S. LEXIS 8338, 75 U.S.L.W. 3694 (2007).

There was sufficient evidence for a driving under the influence conviction, even though there was no scientific evidence of intoxication because an officer's testimony regarding defendant's conduct, as well as the reading on a breath test and his refusal to cooperate with an Intoxilyzer test, showed that he was intoxicated; the officer did not have qualify as an expert to so testify. Ouzts v. State, 947 So. 2d 1005 (Miss. Ct. App. 2006).

Evidence was sufficient to support defendant's conviction for a third offense for DUI in violation of Miss. Code Ann. § 63-11-30(1) because several witnesses saw defendant in an intoxicated state, an officer observed defendant driving, defendant refused the breath test and defendant had two previous DUI convictions. McCool v. State, 930 So. 2d 465 (Miss. Ct. App. 2006).

Appellate court affirmed defendant's conviction in violation of Miss. Code Ann. § 63-11-30 because an officer was not required to read defendant his Miranda rights when the officer first started speaking to defendant about an accident as defendant was not in custody at that time, and defendant's blood alcohol level was .108. Levine v. City of Louisville, 924 So. 2d 643 (Miss. Ct. App. 2006).

Defendant's conviction for driving under the influence pursuant to Miss. Code Ann. § 63-11-30(1)(a) was affirmed, even though the Intoxilyzer results were suppressed, as the officer's testimony regarding defendant's erratic driving, smell of alcohol, and the failure of sobriety tests was sufficient to convict defendant. Further, it was irrelevant that defendant was initially charged under § 63-11-30(1)(c) as both subsections (1)(a) and (1)(c) charged defendant with the same crime. Deloach v. City of Starkville, 911 So. 2d 1014 (Miss. Ct. App. 2005).

Evidence was sufficient to convict defendant under Miss. Code Ann. § 63-11-30(1) where there was no evidence that anyone but defendant had been driving the van and defendant admitted to the officer that he had been drinking and had consumed Xanax pills within the previous 24 hours, which impaired his ability to operate the van; the verdict was not against the overwhelming weight of the evidence. Turner v. State, 910 So. 2d 598 (Miss. Ct. App. 2005).

Verdict finding defendant guilty of DUI manslaughter under Miss. Code Ann. § 63-11-30 was not against the weight of the evidence where investigating officers at the accident scene testified to statements that defendant made about how much alcohol he had consumed before the accident; photographs of the accident scene showed that there were empty beer cans inside defendant's truck and all around the site of the accident; other photographs also showed an unopened six pack of beer inside defendant's truck; and officers testified that the unopened six pack was cold, and, therefore, very likely purchased close in time to the accident. Testimony of the officers also showed that there was a trail of empty beer cans leading from the point where defendant's truck started to flip to the point where it landed. Cowart v. State, 910 So. 2d 726 (Miss. Ct. App. -- 2005).

Verdict of felony DUI, third offense, was consistent with the weight of the evidence where defendant was observed driving south in a northbound lane and after being stopped defendant asked to talk to a particular officer for help with that DUI. In addition, three officers testified to the alcohol on defendant's breath and his bloodshot eyes and a doctor, on cross-examination, refuted the possibility that hypoglycemia could have caused the odor of alcohol on defendant's breath. Cannon v. State, 904 So. 2d 155 (Miss. 2005).

In a prosecution of defendant for vehicular homicide, there was sufficient evidence that defendant was driving a truck at the time of an accident in which his girlfriend's son was killed, even though no witnesses saw defendant driving; defendant's girlfriend testified that defendant emphatically refused to allow her son to drive the truck, and the girlfriend witnessed defendant approach the driver's side and her son approach the passenger's side. Dunaway v. State, 919 So. 2d 67 (Miss. Ct. App. 2005), writ of certiorari dismissed en banc by 920 So. 2d 1008, 2005 Miss. LEXIS 652 (Miss. 2005), writ of certiorari denied by 921 So. 2d 1279, 2006 Miss. LEXIS 35 (Miss. 2006).

Record showed that the officer found defendant slumped over the steering wheel with the motor running and that when defendant finally woke up, he was disoriented. Similarly, the officer testified that he could smell a strong odor of alcohol emanating from defendant, that defendant staggered, was very incoherent and admitted to having consumed three beers; even without the breath test, which defendant refused, there was ample evidence to support defendant's conviction for driving under the influence and defendant's motion for judgment notwithstanding the verdict was properly denied. McDonald v. City of Aberdeen, 906 So. 2d 774 (Miss. Ct. App. 2004).

Defendant was properly convicted of DUI based on a breathalyzer test given to him during a traffic

stop indicating an alcohol content of .151. The trial court was permitted to enhance his punishment based on his prior DUI convictions. McLaurin v. State, 882 So. 2d 268 (Miss. Ct. App. 2004).

Evidence was sufficient to convict defendant of driving under the influence, first offense, where defendant exhibited signs of intoxication in front of a police officer, the intoxilyzer test was positive for alcohol consumption, and defendant, at the station, refused on two occasions to give a breath sample for analysis by an intoxilyzer machine. Knight v. City of Aberdeen, 881 So. 2d 926 (Miss. Ct. App. 2004).

State presented evidence that when stopped at a roadblock, defendant had a strong odor of alcohol on his breath, his speech was slurred, he had trouble walking to the back of the vehicle, and a breath alcohol test showed a blood alcohol level of .188; reasonably minded jurors had substantial credible evidence, upon which to find defendant guilty beyond a reasonable doubt of DUI. Graham v. State, 878 So. 2d 162 (Miss. Ct. App. 2004), writ of certiorari denied by 878 So. 2d 67, 2004 Miss. LEXIS 922 (Miss. 2004).

Trial court properly found defendant guilty of driving under the influence of intoxicating liquor; although the State was not obligated to offer proof on impairment of defendant's driving ability, a police officer testified that defendant ran a stop sign and failed to turn off his high beams as he passed the officer. Christian v. State, 859 So. 2d 1068 (Miss. Ct. App. 2003).

Trial court properly denied defendant's motion for a directed verdict under Miss. Code Ann. § 63-11-30(1). The State offered proof that defendant ran a stop sign and did not dim his headlights when an officer passed his car, that the officer smelled the odor of alcohol coming from defendant's vehicle and saw two six-packs of beer inside the car, that defendant was belligerent and hostile to the officer, and that defendant refused to take an intoxilyzer test at the jail. Christian v. State, 859 So. 2d 1068 (Miss. Ct. App. 2003).

Where defendant was found asleep behind the wheel of defendant's parked car, defendant's statement to the deputy that defendant had consumed some beer prior to driving the vehicle to its then location, in conjunction with the deputy's observations of defendant and the results of the intoxilyzer test, provided sufficient evidence that defendant was guilty of operation of a motor vehicle while under the influence of intoxicating liquor. Holloway v. State, 860 So. 2d 1244 (Miss. Ct. App. 2003).

Defendant's conviction for driving under the influence, first offense, in violation of Miss. Code Ann. § 63-11-30(1)(a), was proper where there was probable cause for the stop as she had repeatedly crossed over the center line and that constituted careless driving pursuant to Miss. Code Ann. § 63-3-1213; thus, there was probable cause to believe that a traffic offense had been committed and defendant was properly stopped for further police action. Saucier v. City of Poplarville, 858 So. 2d 933 (Miss. Ct. App. 2003).

Defendant's challenge to the sufficiency of the evidence basically asserted that the victims' careless conduct had made the accident unavoidable and that his driving while intoxicated was not a contributing factor to the accident; however, it was not necessary for the State to prove that an intoxicating liquor was a proximate cause or a proximate contributing cause of a death, and the jury was entitled to find that defendant had committed an act of negligence when he chose to driving while intoxicated and caused the death of another. Campbell v. State, 858 So. 2d 177 (Miss. Ct. App. 2003).

Evidence was sufficient to support defendant's conviction of felony driving under the influence (DUI) in violation of Miss. Code Ann. § 63-11-30(1)(a); a trained DUI officer observed defendant's vehicle weaving at least three times; after defendant stopped, the officer noticed that defendant

smelled of alcohol, had slurred speech, and bloodshot eyes; defendant failed a field sobriety test; and defendant refused to give an adequate breath sample for the intoxilyzer test. Doolie v. State, 856 So. 2d 669 (Miss. Ct. App. 2003).

Trial court did not err in finding that sufficient probable cause existed for the discovery of defendant's DUI violation, where the underlying charge for possession of beer, which led to the revealing search and seizure, was dismissed; where the officer testified that an open container was in defendant's vehicle and defendant admitted he had been drinking, and the officer smelled an intoxicating substance on defendant's breath, the presence of beer provided sufficient probable cause to conduct a search of defendant and his vehicle. Mayo v. State, 843 So. 2d 739 (Miss. Ct. App. 2003).

Evidence was sufficient to support defendant's conviction under Miss. Code Ann. § 63-11-30, in effect on October 7, 1999, because there was evidence that defendant was driving while intoxicated, that defendant did not stop at a stop sign before entering an intersection at a high rate of speed, that defendant collided with the victim's car, and that the victim died from cardiac arrest related to trauma; state was not required to provide autopsy evidence to establish the cause of death. Joiner v. State, 835 So. 2d 42 (Miss. 2003).

Evidence that defendant drove with a blood alcohol content of .20 and was involved in a traffic accident in which a passenger in defendant's vehicle was killed, was sufficient to support defendant's conviction for aggravated driving while intoxicated; evidence of blood test results was properly admitted despite the fact that defendant demanded that hospital personnel stop trying to draw a sample of defendant's blood after a third unsuccessful attempt, as defendant had consented to have the sample drawn. Gates v. State, 829 So. 2d 1283 (Miss. Ct. App. 2002).

Facsimile copy of a prior driving under the influence conviction was properly admitted into evidence, despite the fact that the seal was blurred, because it was self-authenticating under Miss. R. Evid. 902(1), and no genuine question was raised as to the authenticity of the original under Miss. R. Evid. 1003. Lewis v. State, 831 So. 2d 553 (Miss. Ct. App. 2002).

Officer's testimony was sufficient to support the guilty verdict of driving under the influence because the officer testified (1) that the officer smelled alcohol in defendant's vehicle, on defendant's breath, and defendant's clothes; (2) that defendant admitted to consuming alcohol; and (3) that defendant could not pass the field sobriety test, defendant's gait was impaired, and defendant swayed when standing still. Harris v. State, 830 So. 2d 681 (Miss. Ct. App. 2002), writ of certiorari denied by 842 So. 2d 578, 2003 Miss. LEXIS 323 (Miss. 2003).

The State showed, pursuant to Miss. Code Ann. § 63-11-30(1)(a), that defendant was driving or operating a vehicle through an officer's testimony that the officer observed defendant drive up to the "no parking" area, and while talking with defendant, the officer noticed that he had an open can of beer in his hand, there was a twelve-pack of beer on the passenger side in plain view, his eyes were red, his pupils were dilated, his speech was slurred and he had an odor of an intoxicating beverage on his breath, and that defendant failed the sobriety tests given. Rhoades v. State, 832 So. 2d 544 (Miss. Ct. App. 2002), writ of certiorari denied by 832 So. 2d 533, 2002 Miss. App. LEXIS 779 (Miss. Ct. App. 2002).

The uncontroverted evidence that defendant had ingested illegal narcotics that were still present in measurable quantities in defendant's body, together with evidence of remarkably unusual behavior and defendant's demonstrably reckless operation of a motor vehicle were enough, when considered in conjunction, to support a reasonable inference by the jurors that defendant was, in fact, under the influence of the narcotic substances at the time of the fatal accident; thus, the evidence was sufficient

to convict defendant of vehicular homicide, Miss. Code Ann. § 63-11-30(d). Holloman v. State, 820 So. 2d 52 (Miss. Ct. App. 2002).

Evidence was sufficient to support a conviction for felony DUI negligent death where the record contained testimony that the defendant was speeding, that he was under the influence, and that he made no effort to slow his vehicle to avoid hitting a child who fell in the road with his bicycle on his leg. Smith v. State, 812 So. 2d 1045 (Miss. Ct. App. 2001).

The trial court acted within its discretion by taking judicial notice of the conversion from milligrams per deciliter to grams per milliliter so as to express the plaintiff's blood alcohol content in the manner used in subsection (1). Buel v. Sims, 798 So. 2d 425 (Miss. 2001).

The evidence was sufficient to support the jury's verdict that the defendant was guilty of driving under the influence where he did not attack the accuracy of the intoxilizer's analysis of his blood alcohol content, which was .164%. Porter v. State, 749 So. 2d 250 (Miss. Ct. App. 1999).

Abstract of defendant's prior court record, which county court clerk testified was accurate, was sufficient to prove conviction of second offense for driving under the influence (DUI) in prosecution for felony DUI. McIlwain v. State, 700 So. 2d 586 (Miss. 1997).

In a prosecution for DUI maiming under § 63-11-30, the State was required to prove that (1) the defendant was under the influence of intoxicating liquor or had .10 percent or more of alcohol in his blood while operating a motor vehicle; (2) the defendant was, while intoxicated and operating a motor vehicle, negligent; and (3) the defendant's negligence caused mutilation, disfigurement, or permanent disability of another. Holloman v. State, 656 So. 2d 1134 (Miss. 1995).

In a prosecution for DUI manslaughter under § 63-11-30, the State was required to prove that (1) the defendant was under the influence of intoxicating liquor or had .10 percent or more of alcohol in his blood while operating a motor vehicle; (2) the defendant was, while intoxicated and operating a motor vehicle, culpably negligent; and (3) the defendant's culpable negligence caused the death of another. Holloman v. State, 656 So. 2d 1134 (Miss. 1995).

In a prosecution for DUI maiming in violation of § 63-11-30, the evidence was sufficient to support a finding that the victim was permanently disabled or disfigured within the meaning of the statute where he suffered a fractured pelvis, there was testimony that his injuries were serious and would have been life-threatening without medical treatment, and he still suffered pain and an occasional limp at the time of the trial. Holloman v. State, 656 So. 2d 1134 (Miss. 1995).

The evidence was insufficient to support a conviction under § 63-11-30 for causing the death of another person by negligent operation of a motor vehicle while intoxicated, since there was a lack of evidence that the defendant was intoxicated "at the time" his vehicle struck the victim where a breathalyzer test indicating that the defendant had .13 percent alcohol in his system was administered 3 hours after the accident, there was no evidence demonstrating that the defendant was intoxicated immediately prior to, or at the time of, the accident, and there was uncontroverted testimony that the defendant drank the remains of a half-pint of gin between the time of the accident and the administration of the breathalyzer test. Matter of Slocum v. Jolly, 637 So. 2d 834 (Miss. 1994).

In a prosecution against a driver whose intoxicated condition contributed to the death of a small child, the evidence was sufficient to establish that the defendant was guilty of culpably negligent manslaughter under § 97-3-47, in spite of the defendant's argument that the evidence would only support a conviction for negligently causing the death of another while operating a motor vehicle under the influence of intoxicating liquor as defined by § 63-11-30(4), where eyewitnesses testified that the defendant's automobile was traveling down the wrong side of the road and barely missed striking a parked car immediately prior to veering off the pavement on the opposite side of the road

and striking the child, the defendant had a blood alcohol level of .24, and the defendant failed to give a reason for driving down the left side of the road and then veering suddenly to the right and striking the child, but merely denied that his vehicle was on the wrong side of the road, denied that he narrowly missed the parked vehicle, denied that his vehicle ever left the pavement, and denied that his blood alcohol level was a result of anything other than 2 pre-accident beers and some whiskey consumed after the accident. Hopson v. State, 615 So. 2d 576 (Miss. 1993).

A conviction for driving under the influence may be based upon intoxilyzer results if the test is administered in accordance with the proper procedures and the defendant fails to introduce credible evidence which overcomes the statutory presumption of intoxication. Thus, defendants could be convicted on the basis of a breath test which presumed a 2100 to 1 breath to blood ratio where the defendants did not introduce any evidence concerning their particular ratios. Fisher v. City of Eupora, 587 So. 2d 878 (Miss. 1991).

The evidence was not sufficient to establish that the defendant was guilty of manslaughter by culpable negligence with respect to an automobile accident where the State proved only that the defendant's car collided with the rear of a pickup truck and that the defendant was driving while intoxicated, the defendant and his passenger testified that the defendant was driving well, and not recklessly, negligently, unlawfully, or at a high rate of speed, and no other witnesses contradicted the testimony of the defendant and his passenger. However, the evidence was sufficient to support a conviction for the lesser included offense of negligently killing another while under the influence of intoxicating liquor. Evans v. State, 562 So. 2d 91 (Miss. 1990).

Evidence that the defendant ran a stop sign while intoxicated and collided with a truck resulting in the death of a passenger was not sufficient to prove manslaughter by culpable negligence under § 97-3-47 but was sufficient to support a conviction for the lesser included offense of negligently killing another while under the influence of an intoxicating liquor pursuant to § 63-11-30. Childs v. State, 521 So. 2d 882 (Miss. 1988).

10. INSTRUCTIONS TO JURY.

In a felony driving under the influence (DUI) case, defendant was not entitled to a jury instruction that it was not illegal to drink and drive, because the jury was properly instructed as to the elements of felony DUI and the level of proof required, and there was no evidentiary basis for the instruction, as defendant did not testify at trial that he had not consumed enough alcohol to be considered under the influence; he denied that he had consumed any alcohol on the day of his arrest. Brooks v. State, 999 So. 2d 408 (Miss. Ct. App. 2008), writ of certiorari denied by 999 So. 2d 852, 2009 Miss. LEXIS 48 (Miss. 2009).

In a criminal trial, the jury was properly instructed that the elements required to prove the offense of felony driving under the influence (DUI) in violation of Miss. Code Ann. § 63-11-30(1) were: (1) defendant was operating a motor vehicle, (2) defendant was under the influence of intoxicating liquor, and (3) defendant had two prior DUI convictions within the past 5 years. Defendant was not entitled to a jury instruction that the alcohol intoxication impaired his ability to operate the vehicle. Heidelberg v. State, 976 So. 2d 948 (Miss. Ct. App. 2007).

Where jury instructions did not mention defendant's being under the influence but instead provided that conviction was permitted if defendant did "negligently operate a motor vehicle while having .08% or more blood alcohol by weight volume," the instruction properly reflected the statutory standard for driving under the influence as set forth in Miss. Code Ann. § 63-11-30(1). Sumrall v. State, 955 So. 2d 332 (Miss. Ct. App. 2006), writ of certiorari denied by 949 So. 2d 37, 2007 Miss.

LEXIS 137 (Miss. 2007).

Where defendant was tried for one count of negligent operation of a motor vehicle while under the influence of intoxicating liquors, aggravated assault for his injury of the driver, and five counts of manslaughter by culpable negligence for the deaths of five passengers, he was not entitled to an instruction that aggravated operation of a vehicle while under the influence (DUI), set out in Miss. Code Ann. § 63-11-30, was a lesser-included offense of manslaughter by culpable negligence. Lawrence v. State, 931 So. 2d 600 (Miss. Ct. App. 2005), writ of certiorari denied by 933 So. 2d 303, 2006 Miss. LEXIS 345 (Miss. 2006).

Trial court did not err in refusing to instruct the jury on circumstantial evidence where the State introduced direct evidence of guilt under Miss. Code Ann. § 63-11-30 (1)(a) and (c) by introducing defendant's blood alcohol level and incriminating statements made to the arresting officer. Lewis v. State, 831 So. 2d 553 (Miss. Ct. App. 2002).

In a prosecution for felony driving under the influence of alcohol causing death arising from an incident in which the defendant struck and killed an elderly man as he walked across a street, it was reversible error to instruct the jury that any contributory negligence of the victim was not a defense to the crime charged unless such negligence was the sole proximate cause of the collision and that the defense of contributory negligence had to be proven beyond a reasonable doubt; such instruction effectively shifted the burden of proof to the defendant. Frambes v. State, 751 So. 2d 489 (Miss. Ct. App. 1999).

11. DOUBLE JEOPARDY.

Double Jeopardy Clause was not violated because the drunk-driving statute established separate crimes for each of the victims identified and the offense of leaving the scene of an accident contained different elements from the offenses established by the drunk-driving statute. Buckner v. State, -- So. 3d --, 2013 Miss. App. LEXIS 682 (Miss. Ct. App. Oct. 15, 2013).

Defendant's double jeopardy rights were not violated by her convictions for three counts of driving under the influence and negligently causing death because the State was not required to specifically list the substance or substances that defendant allegedly was driving under the influence of at the time of the accident. Defendant was only convicted of one count of driving under the influence of hydrocodone and negligently causing the death or injury of another for each death or injury so caused. Teston v. State, 44 So. 3d 977 (Miss. Ct. App. 2008), writ of certiorari dismissed by 44 So. 3d 969, 2010 Miss. LEXIS 520 (Miss. 2010).

Appellant's conviction for DUI manslaughter and two counts of DUI mayhem in violation of Miss. Code Ann. § 63-11-30 did not subject him to double jeopardy. Each of the counts were predicated upon separate felonies, one instance of manslaughter and two instances of mutilation or mayhem that appellant committed as a result of his drunk driving. Moreno v. State, 967 So. 2d 701 (Miss. Ct. App. 2007).

Denial of the inmate's petition for post-conviction relief was proper where double jeopardy protection was not implicated because Miss. Code Ann. § 63-11-30(5) required an element not required by Miss. Code Ann. § 97-3-47, namely, that of intoxication. Ramage v. State, 914 So. 2d 274 (Miss. Ct. App. 2005).

Each offense is separate and distinct in cases of felony DUI enhancement and does not violate the constitutional right against double jeopardy. Use of defendant's prior DUI convictions could be used to enhance punishment for his subsequent conviction without violating double jeopardy. McLaurin v. State, 882 So. 2d 268 (Miss. Ct. App. 2004).

Double jeopardy was not implicated in a driving-while-impaired case when a trial court instructed the jury on Miss. Code Ann. § 63-11-30(1)(a) and (c) because they were not separate offenses; rather, they were alternative routes to establishing a violation of Miss. Code Ann. § 63-11-30. Lewis v. State, 831 So. 2d 553 (Miss. Ct. App. 2002).

The double jeopardy clauses of the United States and Mississippi Constitutions do not preclude criminal prosecution for violation of § 63-11-30 subsequent to administrative license suspension pursuant to § 63-11-23(2). Keyes v. State, 708 So. 2d 540 (Miss. 1998).

Section 63-11-30 proscribes the act of drunk driving rather than the act of negligent killing; thus, an indictment charging the defendant with 2 counts of violating § 63-11-30 based on only one act of drunk driving subjected the defendant to double jeopardy and required reversal of the conviction on the second count. Mayfield v. State, 612 So. 2d 1120 (Miss. 1992).

Where a defendant was charged with misdemeanor driving under the influence of alcohol, forfeiture of his bond and entry of a sentence of guilty into the docket constituted a conviction such that a subsequent trial for felonious driving under the influence was barred by the principle of double jeopardy. Bennett v. State, 528 So. 2d 815 (Miss. 1988).

12. SENTENCING.

Trial court properly did not make a finding that defendant was a violent offender under Miss. Code Ann. § 47-5-1003 when defendant was convicted of driving under the influence under Miss. Code Ann. § 63-11-30(5) because § 47-5-1003 does not require the trial court to make an on the record determination that the accused is a violent offender, and further, aggravated DUI does not fall within either of the excluded categories of § 47-5-1003. Smith v. State, 942 So. 2d 308 (Miss. Ct. App. 2006).

Defendant received two separate sentences for two separate offenses; that one followed immediately after the other is one of the costs of committing more than one felony DUI offense, but the statutory maximum was not exceeded on either separate offense. Burns v. State, 933 So. 2d 329 (Miss. Ct. App. 2006).

Petitioner was properly denied postconviction relief after he pled guilty to manslaughter by culpable negligence because the maximum sentence for the crime under Miss. Code Ann. § 63-11-30(4) was 25 years, and petitioner was only sentenced to 20 years in prison, with 14 years suspended. Petitioner failed to show good cause or prejudice. Oaks v. State, 912 So. 2d 1075 (Miss. Ct. App. 2005).

Trial court did not err in admitting the abstract of defendant's first of two DUI convictions in Georgia and considering it for enhancement purposes in the sentencing phase for defendant's conviction of his third DUI offense because in Mississippi prior convictions are necessary elements of the crime of felony DUI under Miss. Code Ann. § 63-11-30, not merely sentence enhancement factors. Also defendant failed to introduce any evidence to show that his first DUI conviction was in fact uncounseled and resulted in jail time. Watkins v. State, 910 So. 2d 591 (Miss. Ct. App. 2005).

Where defendant failed to object to testimony regarding his prior convictions for driving under the influence (DUI) during a felony DUI trial, he waived his right to appeal, despite the fact that the prior convictions were only relevant to sentencing under Miss. Code Ann. § 63-11-30(8). Watson v. State, 835 So. 2d 112 (Miss. Ct. App. 2003).

Under Miss. Code Ann. § 63-11-30(2)(c), a trial court was permitted to impose a sentence for a third conviction of driving under the influence of not less than one year nor more than five years, and petitioner's sentence did not exceed the five-year maximum where he served one year, was involved

in a three-year period of supervised release, his supervised release was revoked, and the suspended four-year sentence was imposed as the three-year supervised release period did not count towards his sentence but was merely time he was under supervision. Johnson v. State, 802 So. 2d 110 (Miss. Ct. App. 2001).

Sentence of 20 years with eight years suspended and five years' probation was within the statutory sentencing limit allowed under Miss. Code Ann. § 63-11-30(5) for a conviction under that statute for felony driving under the influence of alcohol causing death and was not constitutionally excessive. Havard v. State, 800 So. 2d 1193 (Miss. Ct. App. 2001), remanded by 83 So. 3d 452, 2012 Miss. App. LEXIS 94 (Miss. Ct. App. 2012).

Although at the time of defendant's first conviction felony DUI required four rather than the current three convictions, that first conviction may be counted toward the current requirement. Boyd v. State, 751 So. 2d 1050 (Miss. Ct. App. 1998).

A 10-year sentence imposed upon a defendant pursuant to § 63-11-30(4) for a DUI maiming conviction did not constitute cruel or unusual punishment, as it was within the statutory limits. Holloman v. State, 656 So. 2d 1134 (Miss. 1995).

In a prosecution for driving under the influence, enhanced 9-month sentences received by the defendants after they sought a trial de novo in the circuit court were not improper, even though the defendants were originally tried and sentenced in municipal court under § 21-13-19 which provides for a maximum penalty of 6 months' incarceration; when the defendants filed their appeals for trial de novo in the circuit court, they took the chance that the penalties would be greater than allowed by § 21-13-19 since the actions were brought under § 63-11-30(1)(c). Fisher v. City of Eupora, 587 So. 2d 878 (Miss. 1991).

Trial judge acted without statutory authority in suspending defendant's driving privileges for 5 years, and imposed sentence exceeding maximum penalty provided by law, where defendant was convicted of vehicular homicide following head-on collision, because statute provided for period of suspension of driving privileges varying from 90 days to 3 years. Slaymaker v. State, 513 So. 2d 921 (Miss. 1987).

13. NON-ADJUDICATION OF MINORS.

Because defendant's blood alcohol content level was .127 percent, it was not within the parameters of the Mississippi Zero Tolerance for Minors provision of the Implied Consent Law, Miss. Code Ann. § 63-11-30(3)(a); therefore, he was not eligible for non-adjudication under that law. Palmer v. City of Oxford, 860 So. 2d 1203 (Miss. 2003).

14. MISCELLANEOUS.

County court did not apply an improper standard of law when convicting defendant of common-law driving under the influence because its determination of defendant's guilt was well-founded both on the law and the evidence. Huhn v. City of Brandon, 121 So. 3d 947 (Miss. Ct. App. 2013).

In an adversary proceeding in which an insurance company sued a voluntary Chapter 7 debtor, asserting that he was indebted to the insurance company as the insured's subrogee in the amount of $50,000.00 and the insurance company filed an unopposed motion for summary judgment on the issue of non-dischargeability, it had proved by a preponderance of the evidence the existence of debt for personal injury to its insured caused by the debtor's operation of a motor vehicle unlawfully under state law due to his intoxication, in violation of Miss. Code Ann. § 63-11-30. Cincinnati Ins. Co. v.

Deeds (In re Deeds) -- Bankr. --, 2010 Bankr. LEXIS 2809 (Bankr. N.D. Miss. Sept. 1, 2010).

Where an officer conducted a traffic stop, he detected the odor of alcohol coming from the vehicle and noticed that defendant had bloodshot eyes and slurred speech; defendant refused to take the Intoxilyzer 5000 test. Defendant was properly convicted of felony driving under the influence (DUI) in violation of Miss. Code Ann. § 63-11-30(1) based on two prior DUI convictions within 5 years. Heidelberg v. State, 976 So. 2d 948 (Miss. Ct. App. 2007).

Allowing the verdict against defendant to stand would not be an unconscionable injustice where the police officer testified that defendant and his brother had switched places in the car, and his testimony was corroborated by the deputy and an unnamed eyewitness; the act of switching drivers was an indication to the jury that defendant was aware of his intoxicated condition and sought to conceal it from the police, and any claim that defendant's brother was driving at all pertinent times that night was properly considered and resolved by the jury. Ward v. State, 881 So. 2d 316 (Miss. Ct. App. 2004).

Court affirmed the circuit court's decision affirming defendant's conviction under Miss. Code Ann. § 63-11-30(1)(c); while the prosecution violated Miss. Unif. Cir. & County Ct. Prac. R. 9.04 by not providing the documents defendant requested, including the breath test instrument manuals, or by instead filing an objection with the trial court, the requested manuals would not have changed the outcome of the and the discovery error was harmless. Wyatt v. City of Pearl, 876 So. 2d 281 (Miss. 2004).

Where defendant's girlfriend suddenly became violently ill in a secluded, rural location, attempts to summon help were fruitless, and time was clearly of the essence, defendant argued that his decision to drive after drinking was excusable; the trial court erred in rejecting defendant's necessity defense because it applied the wrong legal standard and made no findings to support its conclusion that defendant had other options for getting his girlfriend to a hospital. Stodghill v. State, 881 So. 2d 885 (Miss. Ct. App. 2004), reversed by 892 So. 2d 236, 2005 Miss. LEXIS 59 (Miss. 2005).

While the circuit court, pursuant to Miss. Code Ann. § 99-35-103(b), could have decided the question of law raised by the prosecution on appeal, it erred by reversing defendant's acquittal on a charge of driving under the influence (DUI) second offense, granting the prosecution's motion to amend the charge to DUI first offense (which the lower court had denied), and affirming a conviction for DUI first offense which the lower court had not entered. Jamison v. City of Carthage, 864 So. 2d 1050 (Miss. Ct. App. 2004).

Trial court did not err in convicting defendant of driving under the influence in violation of Miss. Code Ann. § 63-11-30 over his objection to irregularities in the "copy" of the citation/affidavit he received because, although defendant did not have an exact blood alcohol content (BAC) reading listed on the copy of the citation that he received, he was nevertheless aware that his BAC level was above that allowable for individuals under the legal age to purchase alcohol; thus, defendant's traffic ticket complied with Miss. Code Ann. § 63-9-21(6) and (3)(b) and (c). Palmer v. City of Oxford, 860 So. 2d 1203 (Miss. 2003).

Operating a vehicle involves both the moving and the stopping of a vehicle, and when these are done under the influence of alcohol it is considered criminal activity, which operates to limit the duty owed by police and fire personnel under Miss. Code Ann. § 11-46-9(1)(c); however, in order for recovery from a governmental entity to be barred, the criminal activity has to have some causal nexus to the wrongdoing of the tortfeasor. Estate of Williams v. City of Jackson, 844 So. 2d 1161 (Miss. 2003).

Inmate's petition for post-conviction relief failed, as a factual basis for the charge of driving under

the influence (DUI) manslaughter had been established by the inmate's acknowledgement on the record that he drove a vehicle, that he was involved in an accident in which his passenger was killed, that his vehicle was in the wrong lane, and that a test revealed that his blood alcohol level was .29 percent. Turner v. State, 864 So. 2d 288 (Miss. Ct. App. 2003), writ of certiorari denied by 864 So. 2d 282, 2004 Miss. LEXIS 35 (Miss. 2004).

The trial court committed reversible error in denying the defendant's request for a jury trial where he was tried for a violation of subsection (2)(b) of this section, which provided (in its version effective July 1, 1995) for a statutory maximum sentence of one year for second offense D.U.I. Harkins v. State, 735 So. 2d 317 (Miss. 1999).

Even if statute providing that person shall not be entitled to any judicial review of or appeal from actions of Commissioner of Public Safety suspending person's driver's license pursuant to statute prescribing penalties for operation of vehicle while under influence had been in effect when motorist filed petition for reduction of driver's license suspension, statute would only have prevented appeal of suspension, and would not have prevented petition for reduction. State, Dep't of Pub. Safety v. Prine, 687 So. 2d 1116 (Miss. 1996).

Initial stop of motorists at highway sobriety checkpoints conducted by state police did not violate Fourth Amendment, as balance among state's interest in preventing drunk driving, extent to which checkpoint program could reasonably be said to advance that interest, and degree of intrusion upon individual motorists, weighed in favor of program. Michigan Dep't of State Police v. Sitz, 496 U.S. 444, 110 S. Ct. 2481, 110 L. Ed. 2d 412 (1990), on remand, 193 Mich. App. 690, 485 N.W.2d 135 (1992).

In a prosecution for driving while intoxicated, the trial court's refusal to compel production of an intoxilyzer machine into court to conduct a demonstration did not violate the defendant's constitutional right to be confronted by the witnesses against him and to have compulsory process for obtaining witnesses in his favor, where the trial court ordered the city to allow the defendant the opportunity to run a test in the police station where the intoxilyzer machine was situated, the defendant failed to show that he would be unable to do what was needed in order to properly defend the case by examining and testing the machine at the police station, the defendant made no showing that he could substantially replicate the conditions of the night of his arrest, and moving the intoxilyzer machine to the court house would have been substantially disruptive and inconvenient to the city law enforcement authorities. Goforth v. City of Ridgeland, 603 So. 2d 323 (Miss. 1992).

In a prosecution for driving under the influence, the trial court did not abuse its discretion in denying the defendants' requests for an expert on the breath testing device used by the arresting officers, where the requests were no more than undeveloped assertions and the defendants made no showing that the requested assistance would benefit them in any way. Fisher v. City of Eupora, 587 So. 2d 878 (Miss. 1991).

15. PRIOR CONVICTIONS.

Defendant's conviction for his third DUI offense within five years, under Miss. Code Ann. § 63-11-30(2)(c), was appropriate because, even though the abstract of defendant's prior conviction did not include the date of arrest, a reasonable juror could have inferred that the date of arrest for the DUI was the same date that the offense occurred. Nelson v. State, 69 So. 3d 50 (Miss. Ct. App. 2011).

16. APPEALS.

Because defendant did not post the necessary bond pursuant to Miss. Unif. Cir. & County Ct. Prac. R. 12.02(A) and he did not file a motion seeking to cure his deficient appeal, his appeal from a municipal court's judgment accepting his guilty plea to driving under the influence was properly dismissed . Hill v. City of Wiggins, 984 So. 2d 1086 (Miss. Ct. App. 2008).

17.-20. [RESERVED FOR FUTURE USE.]

21. UNDER FORMER LAW.

One need not be legally intoxicated in order for question of impairment of reaction time by intoxicating liquors to be properly submitted to jury in negligence action; driver's admission to having consumed several beers in hours preceding traffic accident forms sufficient evidentiary basis for submission of question to jury notwithstanding absence of alcohol on driver's breath and absence of liquor bottles in driver's car. Mills v. Nichols, 467 So. 2d 924 (Miss. 1985).

Being under the influence of marijuana is not a designated criminal offense under our statutes except in conjunction with the operation of a vehicle. Murray v. State, 310 So. 2d 919 (Miss. 1975).

Driving an automobile on a highway under the influence of intoxicants, or at a high and unlawful rate of speed, is not only dangerous but is negligence per se, and if such negligence contributes to an injury the defendant is liable in damages. Freeze v. Taylor, 257 So. 2d 509 (Miss. 1972).

ATTORNEY GENERAL OPINIONS

Miss. Code Section 63-11-30(2)(b) provides that justice court may fine person full amount provided for, that is, up to $1,500, even though justice court's civil jurisdiction is still limited to $1,000. Tallant, Apr. 21, 1993, A.G. Op. #93-0236.

Miss. Code Section 63-11-30 requires justice court judges to sentence persons convicted of driving under influence (DUI) to complete safe driving course; this statute places duty on judge, not clerk, to sign order requiring defendant to attend these programs. Ferguson, June 9, 1993, A.G. Op. #93-0331.

Constable, where probable cause does exist, may charge an individual with D.U.I. under statute, even though constable may not administer breath test under Section 63-11-5. Lewis, July 14, 1993, A.G. Op. #93-0369.

Section 99-15-26 of Mississippi Code, which allows judge to withhold adjudication upon defendant's completion of certain conditions, specifically does not apply to any offense under the Mississippi Implied Consent Law. Stephens, Jan. 12, 1994, A.G. Op. #93-0889.

Section 21-23-7(5) authorizes a municipal court judge, in the judge's discretion to suspend the jail time under Section 63-11-30(2)(b). Crow, February 23, 1995, A.G. Op. #95-0105.

Under this section, a conviction of the charge of DUI, where the defendant had refused to submit to a breath test, would count as a DUI conviction for enhancement purposes. Fike, April 6, 1995, A.G. Op. #95-0195.

Double jeopardy does not necessarily prohibit charging a defendant with public drunkenness under Section 97-29-47, even if that defendant has been acquitted of DUI under Section 63-11-30. The two are separate and distinct criminal charges and contain different elements. Moffett, June 6, 1995, A.G. Op. #95-0277.

Section 63-11-30(7) overrules Page v. State, 607 So. 2d 1163 (Miss. 1992) and Ashcraft v. City of Richland, 620 So. 2d 1210 (Miss. 1993) in that Section 63-11-30(7) states that the indictment shall not be required to enumerate previous DUI convictions. It shall only be necessary that the

indictment state the number of times that a defendant has been convicted and sentenced within the required time. Mitchell, August 14, 1995, A.G. Op. #95-0522.

The date of the offense and not the date of trial determines when the 1995 amendment to Section 63-11-30, which extends the time period for which prior D.U.I. offenses may be considered for enhancement purposes to ten years, should apply. Solomon, August 14, 1995, A.G. Op. #95-0521.

Under this section, there is no requirement that a breath alcohol intoxilizer test be given to an individual who is suspected of DUI. Gentry, May 3, 1996, A.G. Op. #96-0251.

Under this section the Legislature intended for second and subsequent DUI offenders to serve the mandatory minimum incarceration time consecutively. O'Cain, September 5, 1996, A.G. Op. #96-0621.

Based on Section 63-11-30 the fee that is required to be paid when filing a hardship petition is non-refundable. Coleman, October 11, 1996, A.G. Op. #96-0703.

Under Section 63-11-21, if a person refuses to submit to a chemical test, the officer should inform the person that he is subject to arrest and upon conviction faces the same penalties as one who does submit to the test. The law enforcement office need not provide such a warning if the person does not refuse to submit to a chemical test. See also Section 63-11-30. Jones, November 8, 1996, A.G. Op. #96-0786.

The failure to advise the person as set forth in Section 63-11-21 would not effect the prosecution. This amendment to the code section affords the defendant no additional rights. See also Section 63-11-30. Jones, November 8, 1996, A.G. Op. #96-0786.

Pursuant to Section 63-11-21 it is only necessary for the officer to inform the driver of the consequences if the driver refuses to submit to a chemical test. See also Section 63-11-30. Henderson, November 8, 1996, A.G. Op. #96-0763.

Pursuant to Section 63-11-30 the law enforcement officer must inform a driver who refuses to submit to a chemical test that he is subject to arrest and upon conviction faces the same penalties as one who does submit to the test. Henderson, November 8, 1996, A.G. Op. #96-0763.

Section 63-11-30(5) does not provide the exclusive method of establishing prior convictions for enhancement purposes under the DUI law and that a certified copy of a conviction from the clerk of the court where the defendant was previously convicted would be sufficient. Cadle, November 15, 1996, A.G. Op. #96-0791.

The vehicle forfeiture provisions of Miss Code Section 63-11-30(2)(c) only apply to a vehicle that is owned by the driver charged with a third DUI violation and not to a vehicle owned by someone other than such a driver. Bryan, Aug. 15, 1997, A.G. Op. #97-0498.

Courts have discretion to allow amendments of improper tickets issued for driving under the influence of alcohol or other impairing substances if the defendant is given a fair opportunity to prepare a defense. McCarty, Aug. 15, 1997, A.G. Op. #97-0502.

In certain circumstances, an officer may legally sign an affidavit charging an individual with DUI even if another officer makes the initial traffic stop. Gentry, Dec. 12, 1997, A.G. Op. #97-0759.

The statute mandates that the court order an offender to attend MASEP and does not make exceptions for out-of-state drivers who are convicted of a first offense DUI. Miller, September 4, 1998, A.G. Op. #98-0520.

The Zero Tolerance for Minors law only applies when a person under the age of 21 years has a blood alcohol concentration of two one-hundredths percent (.02%) or more, but lower than eight one-hundredths percent (.08%); therefore, if a person refuses to take an intoxilizer test and there is no blood alcohol level reading, the Zero Tolerance for Minors section of the DUI law would not

apply. Johnston, October 27, 1998, A.G. Op. #98-0607.

It must be shown that a DUI defendant either employed an attorney or waived his right to an attorney, regardless of whether a defendant is given jail time on a DUI 1st and 2nd offense. Rushing, November 25, 1998, A.G. Op. #98-0711.

A forfeiture action after the final disposition of the DUI case should be brought promptly upon final conviction. Bruni, August 20, 1999, A.G. Op. #99-0401.

A second offense DUI may be tried in absentia, and a first offense DUI conviction that was tried in absentia may be used for enhancement purposes. Belk, Jr., March 24, 2000, A.G. Op. #2000-0126.

It is not necessary to hold an evidentiary hearing prior to releasing a vehicle to a third party or lienholder. Pace, April 7, 2000, A.G. Op. #2000-0178.

The justice court record of a juvenile who is arrested and charged with DUI is a public record until and unless a court orders the charge nonadjudicated. Little, Oct. 6, 2000, A.G. Op. #2000-0592.

If a police officer has probable cause to believe that an individual is driving under the influence on the state fairgrounds in violation of Section 63-11-30, the officer may stop the individual and charge the violator accordingly; however, if the operator of the vehicle refuses to submit to a chemical test, it must be shown that the vehicle was being operated on the public highways, public roads, and streets of the state before the violator can be subjected to the penalties of Section 63-11-5. DeLaughter, Nov. 20, 2000, A.G. Op. #2000-0679.

If a defendant is convicted of DUI second offense and he also refused the intoxilyzer test, his driver's license is suspended for five years (two years pursuant to Section 63-11-30(2)(b) plus one year pursuant to Section 63-11-23(1) plus two years pursuant to Section 63-11-30(4)); the five years is reduced to three 3 years upon successful completion of chemical dependency treatment at a facility approved by the Department of Mental Health. Shirley, Mar. 30, 2001, A.G. Op. #01-0167.

If a defendant is convicted of DUI third offense and he also refused the intoxilyzer test, his driver's license is suspended for 11 years (five years pursuant to Section 63-11-30(2)(c) plus one year pursuant to Section 63-11-23(1) plus five years pursuant to Section 63-11-30(4)); the 11 years is reduced to seven 7 years upon successful completion of chemical dependency treatment at a facility approved by the Department of Mental Health. Shirley, Mar. 30, 2001, A.G. Op. #01-0167.

Subsection (1)(d) requires that the prosecution show that the defendant was under the influence of any drug or controlled substance, the possession of which is unlawful under the Mississippi Controlled Substances Law; there is no requirement that the prosecution show a level of impairment, but merely that the defendant is under the influence of such a drug. Knight, Apr. 23, 2001, A.G. Op. #01-0227.

A minor charged with being impaired by any substance other than alcohol does not qualify for the Zero Tolerance for Minors provisions (subsection 3) since he will not have a blood alcohol reading between .02 percent and .08 percent. Knight, Apr. 23, 2001, A.G. Op. #01-0227.

A conviction for a DUI violation within the last five years may be used for enhancement purposes even if the defendant was a minor at the time he was convicted of the prior DUI and is no longer a minor when cited for the current DUI charge. Baker, Sr., Apr. 23, 2001, A.G. Op. #01-0225.

A justice court has authority to nonadjudicate a charge only in the instance of a DUI under the Zero for Tolerance for Minors Act found in subsection (3)(g); the nonadjudication of a charge does not automatically expunge the record of such charges, but the court has the discretion to expunge a nonadjudicated charge on its own motion or the defendant may petition the court to expunge a nonadjudicated charge; unless or until the nonadjudicated charges are expunged, they remain on the docket with the disposition of nonadjudicated/dismissed. Shirley, Nov. 30, 2001, A.G. Op.

#01-0719.

If a judge non-adjudicates a DUI charge under § 63-11-30(3) but imposes a $250.00 fine as a condition of such non-adjudication, such fine is a "penalty" under § 99-19-73 and, therefore, the assessment must be collected. Cruber, Feb. 22, 2002, A.G. Op. #02-0102.

Law enforcement officers may revise existing uniform Implied Consent or DUI citations from .10 BAC to .08 BAC. to reflect the current threshold level of alcohol concentration. Mullen, Oct. 18, 2002, A.G. Op. #02-0572.

In regard to revising Implied Consent or DUI citations because of changes in the law, a municipality must comply with § 63-9-21 and may not delay ordering revised citations until the current supply is exhausted. Mullen, Oct. 18, 2002, A.G. Op. #02-0572.

The provisions of the Zero Tolerance for Minors subsection apply only to someone under the age of twenty-one who is being charged under subsection(1)(c) which requires a specific amount of alcohol in the person's blood; they do not apply to someone who is charged under subsection (1)(d). Baker, Dec. 6, 2002, A.G. Op. #02-0698.

Section 63-11-30(2)(c) provides for the forfeiture of a vehicle upon the conviction of a defendant for a third offense DUI; there is no provision for forfeiture of a vehicle upon a second offense DUI conviction. Johnston, Jan. 10, 2003, A.G. Op. #02-0762.

A minor who has had a DUI non-adjudicated may not have a subsequent DUI offense non-adjudicated. Livingston, July 7, 2003, A.G. Op. 03-0311.

A defendant convicted of DUI second offense would not receive credit against the mandatory five days of imprisonment for time spent at an inpatient treatment facility. Zebert, June 21, 2004, A.G. Op. 04-0246.

The authority of a municipal or justice court to grant a hardship privilege does not apply to anyone who does not qualify for the provisions of the Zero Tolerance for Minors Act. Nowak, July 23, 2004, A.G. Op. 04-0325.

An individual seeking a hardship privilege in municipal of justice court must file a petition with the municipal or justice court and pay the clerk of the municipal or justice court a fee of $50.00 to be deposited into the state general fund for substance abuse treatment and education. Nowak, July 23, 2004, A.G. Op. 04-0325.

The fact that a driver apprehended driving a motor vehicle while under the influence of a drug or controlled substance has a valid prescription is a defense to a prosecution under 63-11-30(1)(d); however, it would be a violation of Section 63-11-30 (1)(b) regardless of the existence of a prescription if the person's driving ability was impaired. Mitchell, Feb. 3, 2006, A.G. Op. 05-0188.

ALR. What amounts to violation of drunken-driving statute in officer's "presence" or "view" so as to permit warrantless arrest. 74 A.L.R.3d 1138.

What constitutes driving, operating, or being in control of motor vehicle for purposes of driving while intoxicated statutes. 93 A.L.R.3d 7.

Necessity and sufficiency of proof that tests of blood alcohol concentration were conducted in conformance with prescribed methods. 96 A.L.R.3d 745.

Reckless driving as lesser included offense of driving while intoxicated or similar charge. 10 A.L.R.4th 1252.

Validity, construction, and application of statutes directly proscribing driving with blood-alcohol level in excess of established percentage. 54 A.L.R.4th 149.

Alcohol-related vehicular homicide: nature and elements of offense. 64 A.L.R.4th 166.

Passenger's liability to vehicular accident victim for harm caused by intoxicated motor vehicle driver. 64 A.L.R.4th 272.

Driving while intoxicated: "choice of evils" defense that driving was necessary to protect life or property. 64 A.L.R.4th 298.

Cough medicine as "intoxicating liquor" under DUI statute. 65 A.L.R.4th 1238.

Operation of mopeds and motorized recreational two-, three-, and four-wheeled vehicles as within scope of driving while intoxicated statutes. 32 A.L.R.5th 659.

Applicability, to operation of motor vehicle on private property, of legislation making drunken driving a criminal offense. 52 A.L.R.5th 655.

Validity, construction, and application of statute permitting forfeiture of motor vehicle for operating while intoxicated. 89 A.L.R.5th 539.

Validity, construction, and operation of school "zero tolerance" policies towards drugs, alcohol, or violence. 117 A.L.R.5th 459.

Vertical gaze nystagmus test: Use in impaired driving prosecution. 117 A.L.R.5th 491.

Claim of diabetic reaction or hypoglycemia as defense in prosecution for driving while under influence of alcohol or drugs. 17 A.L.R.6th 757.

Assimilation, under Assimilative Crimes Act (18 U.S.C.A. § 13), of state statutes relating to driving while intoxicated or under influence of alcohol. 175 A.L.R. Fed. 293.

AM JUR. 19 Am. Jur. Trials 123, Defense on Charge of Driving While Intoxicated.

34 Am. Jur. Trials 499, Failure to Protect the Public from an Intoxicated Driver.

17 Am. Jur. Proof of Facts 2d 1, Defense to Charge of Driving Under the Influence of Alcohol.

1 Am. Jur. Proof of Facts 3d 545, Negligent Failure to Detain Intoxicated Motorist.

9 Am. Jur. Proof of Facts 3d 459, Proof and disproof of alcohol-induced driving impairment through evidence of observable intoxication and coordination testing.

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Miss. Code Ann. § 63-11-31 (2014)

Legislative Alert:
LEXSEE 2014 Miss. HB 412 -- See section 2.

§ 63-11-31. Impoundment or immobilization of all vehicles registered to person convicted of DUI; installation of ignition interlock system

[Until July 1, 2014, this section shall read:]

(1) In addition to the penalties authorized for any second or subsequent convictions of Section 63-11-30, the court shall order either the impoundment or immobilization of all vehicles registered to the person convicted for the entire length of license suspension to commence upon conviction and persist during the entire driver's license suspension period. However, a county, municipality, sheriff's department or the Department of Public Safety shall not be required to keep, store, maintain, serve as a bailee or otherwise exercise custody over a motor vehicle impounded under the provisions of this section.

(2) (a) If other licensed drivers living in the household are dependent upon the vehicle subject to impoundment or immobilization for necessary transportation, the court may order the installation of an ignition interlock system on the vehicle in lieu of impoundment or immobilization. Additionally, the court shall order the installation of an ignition interlock system on all vehicles

registered to the person for a minimum period of six (6) months to occur upon reinstatement of the person's driver's license if the court determines it is a vehicle to which the person has access and which should be subject to ignition interlock. The cost associated with impoundment, immobilization or ignition interlock shall be paid by the person convicted. For the purpose of this section, "ignition interlock device" means a device which connects a motor vehicle ignition system to a breath-alcohol analyzer and prevents a motor vehicle ignition from starting if the driver's blood alcohol level exceeds the calibrated setting on the device.

(b) A person may not tamper with, or in any way attempt to circumvent the immobilization or impoundment of vehicles ordered by the court. A violation of this paragraph (b) is a misdemeanor and upon conviction the violator shall be fined an amount not less than Two Hundred Fifty Dollars ($ 250.00) nor more than One Thousand Dollars ($ 1,000.00) or imprisoned for not more than one (1) year or both.

(c) When a court orders a person to operate only a motor vehicle which is equipped with a functioning ignition interlock device, the court shall establish a specific calibration setting no lower than two one-hundredths percent (.02%) nor more than four one-hundredths percent (.04%) blood alcohol concentration at which the ignition interlock device will prevent the motor vehicle from being started.

(d) Upon ordering use of an ignition interlock device, the court shall:

(i) State on the record the requirement for and the period of use of the device, and so notify the Department of Public Safety;

(ii) Direct that the records of the department reflect that the person may not operate a motor vehicle that is not equipped with an ignition interlock device;

(iii) Direct the department to attach or imprint a notation on the driver's license of any person restricted under this section stating that the person may operate only a motor vehicle equipped with an ignition interlock device;

(iv) Require proof of the installation of the device and periodic reporting by the person for verification of the proper operation of the device;

(v) Require the person to have the system monitored for proper use and accuracy by an entity approved by the department at least semiannually, or more frequently as the circumstances may require;

(vi) Require the person to pay the reasonable cost of leasing or buying, monitoring, and maintaining the device, and may establish a payment schedule therefore.

(e) (i) 1. A person prohibited under this section from operating a motor vehicle that is not equipped with an ignition interlock device may not solicit or have another person attempt to start or start a motor vehicle equipped with such a device.

2. A person may not attempt to start or start a motor vehicle equipped with an ignition interlock device for the purpose of providing an operable motor vehicle to a person who is prohibited under this section from operating a motor vehicle that is not equipped with an ignition interlock device.

3. A person may not tamper with, or in any way attempt to circumvent, the operation of an ignition interlock device that has been installed in a motor vehicle.

4. A person may not knowingly provide a motor vehicle not equipped with a functioning ignition interlock device to another person who the provider of such vehicle knows or should know is prohibited from operating a motor vehicle not equipped with an ignition interlock device.

(ii) A violation of this paragraph (e) is a misdemeanor and upon conviction the violator shall be fined an amount not less than Two Hundred Fifty Dollars ($ 250.00) nor more than One Thousand Dollars ($ 1,000.00) or imprisoned for not more than one (1) year, or both.

(iii) A person shall not be in violation of this paragraph (e) if:

1. The starting of a motor vehicle equipped with an ignition interlock device is done for the purpose of safety or mechanical repair of the device or the vehicle, and the person subject to the court order does not operate the vehicle; or

2. The court finds that a person is required to operate a motor vehicle in the course and scope of the person's employment. If the vehicle is owned by the person's employer, the person may operate that vehicle during regular working hours for the purposes of employment without installation of an ignition interlock device if the employer has been notified of such driving privilege restriction and if proof of that notification is kept with the vehicle at all times. This employment exemption does not apply if the business entity that owns the vehicle is owned or controlled by the person who is prohibited from operating the motor vehicle not equipped with an ignition interlock device.

(f) (i) A judge may also order that the vehicle owned or operated by a person or a family member of any person who committed a violation of Section 63-11-30 be equipped with an ignition interlock device for all or a portion of the time the driver's license of the operator of such vehicle is suspended or restricted pursuant to this section, if:

1. The operator of the vehicle used to violate Section 63-11-30 has at least one (1) prior conviction for driving a motor vehicle when such person's privilege to do so is cancelled, suspended or revoked as provided by Section 63-11-30; or

2. The driver's license of the operator of such vehicle was cancelled, suspended or revoked at the time of the violation of Section 63-11-30.

(ii) The provisions of this paragraph (f) shall not apply if the vehicle used to commit the violation of Section 63-11-30, was, at the time of such violation, rented or stolen.

(3) The provisions of this section are supplemental to the provisions of Section 63-11-30.

[From and after July 1, 2014, this section shall read:]

(1) For the purposes of this section, "ignition-interlock device" means a device that connects a motor vehicle ignition system to a breath-alcohol analyzer and prevents a motor vehicle ignition from starting if the driver's blood alcohol level exceeds the calibrated setting on the device.

(2) (a) The cost of installation of an ignition-interlock device shall be borne by the person to whom is issued an ignition-interlock-restricted driver's license unless a court determines that the person is indigent.

(b) Anyone convicted under Section 63-11-30 shall be assessed by the court, in addition to the criminal fines, penalties and assessments provided by law for violations of Section 63-11-30, a fee of not less than Thirty Dollars ($ 30.00) nor more than One Hundred Dollars ($ 100.00), to be deposited in the Ignition-Interlock Device Fund in the State Treasury. Anyone who receives a nonadjudication under Section 63-11-30 shall be assessed by the court, a fee of Two Hundred Fifty Dollars ($ 250.00) to be deposited in the Ignition-Interlock Device Fund in the State Treasury.

(3) (a) The specific calibration setting for an ignition-interlock device shall be no more than three one-hundredths percent (0.03%) blood alcohol concentration for persons twenty-one (21) years of age or older and no more than two one-hundredths percent (0.02%) blood alcohol concentration for persons under twenty-one (21) years of age, over which concentration the ignition-interlock device will prevent the motor vehicle from being started.

(b) A person who has an ignition-interlock device installed in a vehicle shall:

(i) Provide proof of the installation of the device and periodic reporting for verification of the proper operation of the device;

(ii) Have the system monitored for proper use and accuracy by an entity approved by the department at least semiannually, or more frequently as the circumstances may require;

(iii) Pay the reasonable cost of leasing or buying, monitoring, and maintaining the device, and may establish a payment schedule therefore.

(4) (a) (i) A person who is limited to driving only under an ignition-interlock-restricted driver's license shall not operate a vehicle that is not equipped with an ignition-interlock device.

(ii) A person prohibited from operating a motor vehicle that is not equipped with an ignition-interlock device may not solicit or have another person attempt to start or start a motor vehicle equipped with such a device.

(iii) A person may not start or attempt to start a motor vehicle equipped with an ignition-interlock device for the purpose of providing an operable motor vehicle to a person who is prohibited from operating a motor vehicle that is not equipped with an ignition-interlock device.

(iv) A person may not tamper with, or in any way attempt to circumvent, the operation of an ignition-interlock device that has been installed in a motor vehicle.

(v) A person may not knowingly provide a motor vehicle not equipped with a functioning ignition-interlock device to another person who the provider of the vehicle knows or should know is prohibited from operating a motor vehicle not equipped with an ignition-interlock device.

(b) A violation of this subsection (4) is a misdemeanor and upon conviction the violator shall be fined an amount not less than Two Hundred Fifty Dollars ($ 250.00) nor more than One Thousand Dollars ($ 1,000.00) or imprisoned for not more than one (1) year, or both.

(c) A person shall not be in violation of this subsection (4) if:

(i) The starting of a motor vehicle equipped with an ignition-interlock device is done for the purpose of safety or mechanical repair of the device or the vehicle, and the person subject to the restriction does not operate the vehicle; or

(ii) The court finds that a person is required to operate a motor vehicle in the course and scope of the person's employment. If the vehicle is owned by the person's employer, the person may operate that vehicle during regular working hours for the purposes of employment without installation of an ignition-interlock device if the employer has been notified of the driving privilege restriction and if proof of that notification is kept with the vehicle at all times. This employment exemption does not apply if the business entity that owns the vehicle is owned or controlled by the person who is prohibited from operating the motor vehicle not equipped with an ignition- interlock device.

(a) A judge may also order that the vehicle owned or operated by a person or a family member of any person who committed a violation of Section 63-11-30 be equipped with an ignition-interlock device for all or a portion of the time the driver's license of the operator of such vehicle is suspended or restricted pursuant to this section, if:

(i) The operator of the vehicle used to violate Section 63-11-30 has at least one (1) prior conviction for driving a motor vehicle when the person's privilege to do so is cancelled, suspended or revoked as provided by Section 63-11-30; or

(ii) The driver's license of the operator of the vehicle was cancelled, suspended or revoked at the time of the violation of Section 63-11-30.

(b) The provisions of this subsection (5) shall not apply if the vehicle used to commit the violation of Section 63-11-30, was, at the time of the violation, rented or stolen.

(6) The provisions of this section are supplemental to the provisions of Section 63-11-30.

HISTORY: SOURCES: Laws, 2000, ch. 542, § 1; Laws, 2001, ch. 477, § 1; Laws, 2013, ch. 489, § 2, eff from and after July 1, 2014.

NOTES: EDITOR'S NOTE. --A prior § 63-11-31 [Codes, 1942, §§ 8175-04, 8175-05; Laws, 1971, ch. 515, §§ 4, 5] was repealed by Laws, 1981, ch. 491, § 16, eff from and after July 1, 1981. That section made it unlawful to operate a vehicle while under the influence of intoxicating liquor, and provided the penalties for a violation.

AMENDMENT NOTES. --The 2013 amendment, effective July 1, 2014, rewrote the section to delete impoundment or immobilization of vehicles registered to persons convicted of DUI and to revise provisions relating to ignition-interlock devices.

CROSS REFERENCES. --Ignition-Interlock Device Fund, see § 63-1-43.
Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

ATTORNEY GENERAL OPINIONS
Although federal regulations allow the revocation or suspension of a motor vehicle license plate in order to immobilize a motor vehicle, the statute does not provide for revocation or suspension of a tag. White, Jr., Nov. 27, 2000, A.G. Op. #2000-0662.
Confiscation of a vehicle license plate does not constitute immobilization or impoundment. White, Jr., Nov. 27, 2000, A.G. Op. #2000-0662.

ALR. Validity, construction, and application of ignition interlock laws. 15 A.L.R.6th 375.
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Miss. Code Ann. § 63-11-32 (2014)

§ 63-11-32. Development, implementation and funding of driver improvement program for first offenders convicted of driving while intoxicated or under influence of another substance which impairs ability to operate motor vehicle

(1) The State Department of Public Safety in conjunction with the Governor's Highway Safety Program, the State Board of Health, or any other state agency or institution shall develop and implement a driver improvement program for persons identified as first offenders convicted of driving while under the influence of intoxicating liquor or another substance which had impaired such person's ability to operate a motor vehicle, including provision for referral to rehabilitation facilities.

(2) The program shall consist of a minimum of ten (10) hours of instruction. Each person who participates shall pay a nominal fee to defray a portion of the cost of the program.

(3) Such assessments as are collected under subsection (2) of Section 99-19-73 shall be deposited in a special fund hereby created in the State Treasury and designated the "Mississippi Alcohol Safety Education Program Fund." Monies deposited in such fund shall be expended by the Board of Trustees of State Institutions of Higher Learning as authorized and appropriated by the Legislature to defray the costs of the Mississippi Alcohol Safety Education Program operated pursuant to the provisions of this section. Any revenue in the fund which is not encumbered at the end of the fiscal year shall lapse to the General Fund.

(4) Such assessments as are collected under subsection (2) of Section 99-19-73 shall be deposited in a special fund hereby created in the State Treasury and designated the "Federal-State Alcohol Program Fund." Monies deposited in such fund shall be expended by the Department of Public Safety as authorized and appropriated by the Legislature to defray the costs of alcohol and traffic safety programs. Any revenue in the fund which is not encumbered at the end of the fiscal year shall lapse to the General Fund.

(5) Such assessments as are collected under subsection (2) of Section 99-19-73 shall be deposited in a special fund hereby created in the State Treasury and designated the "Mississippi Crime Laboratory Implied Consent Law Fund." Monies deposited in such fund shall be expended by the Department of Public Safety as authorized and appropriated by the Legislature to defray the costs of equipment replacement and operational support of the Mississippi Crime Laboratory relating to enforcement of the Implied Consent Law. Any revenue in the fund which is not encumbered at the end of the fiscal year shall not lapse to the General Fund but shall remain in the fund.

HISTORY: SOURCES: Laws, 1973, ch. 408, § 1; Laws, 1979, ch. 305; Laws, 1981, ch. 491, § 7; Laws, 1983, ch. 466, § 8; Laws, 1990, ch. 329, § 11; Laws, 1991, ch. 356 § 2; Laws, 1996, ch. 527, § 12, eff from and after July 2, 1996.

NOTES: EDITOR'S NOTE. --Laws, 1981, ch. 491, § 15, provides as follows:

SECTION 15. Prosecutions, convictions and penalties for violations which occurred prior to the effective date of this act under laws amended or repealed by this act, or suspensions or denials of driver's licenses or permits made pursuant to laws amended or repealed by this act, shall not be affected or abated by the provisions of this act.

Laws, 1983, ch. 466, § 12, eff from and after July 1, 1983, provides as follows:

"SECTION 12. Prosecutions, convictions and penalties for violations which occurred prior to July 1, 1983, under laws amended by this act, and suspensions or denials of driver's licenses, permits or privileges made pursuant to laws amended by this act, shall not be affected or abated by the provisions of this act. In addition, convictions which occurred prior to July 1, 1983, under laws amended by this act shall be counted for the purposes of determining the penalties which shall be imposed on any person convicted for a second or subsequent offense under the provisions of the laws amended by this act."

CROSS REFERENCES. --Court ordering completion of alcohol safety education program by one convicted of driving while intoxicated or under influence of other substance which impairs ability to operate motor vehicle, see § 63-11-30.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of Title 63, see § 99-19-73.

RESEARCH REFERENCES

ALR. Horseback riding or operation of horse-drawn vehicle as within drunk driving statute. 71 A.L.R.4th 1129.

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Miss. Code Ann. § 63-11-33 (2014)

§ 63-11-33 and 63-11-35. Repealed

Repealed by Laws, 1981, ch. 491, § 16, eff from and after July 1, 1981.

[Codes, 1942, §§ 8175-04, 8175-06, 8175-07; Laws, 1971, ch. 515, §§ 4, 6, 7]

NOTES: EDITOR'S NOTE. --Former § 63-11-33 made it unlawful to operate a vehicle under the influence of intoxicating liquor, and provided the penalties where chemical test results were not available. Former § 63-11-35 made it unlawful to operate a vehicle while intoxicated, and provided the penalties for a violation.

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Miss. Code Ann. § 63-11-37 (2014)

§ 63-11-37. Contents and disposition of record of conviction under § 63-11-30

It shall be the duty of the trial judge, upon conviction of any person under Section 63-11-30, to mail a true and correct copy of the traffic ticket, citation or affidavit evidencing the arrest that resulted in the conviction and a copy of the abstract of the court record within five (5) days to the Commissioner of Public Safety at Jackson, Mississippi. The trial judge in municipal and justice courts shall show on the docket and the trial judge in courts of record shall show on the minutes:

(a) Whether or not a chemical test was given and the results of the test;

(b) Where conviction was based in whole or in part on the results of such a test.

The abstract of the court record shall show the date of the conviction, the results of the test if there was one and the penalty so that a record of same may be made by the Department of Public Safety.

For the purposes of Section 63-11-30, a bond forfeiture shall operate as and be considered as a conviction.

HISTORY: SOURCES: Codes, 1942, § 8175-08; Laws, 1971, ch. 515, § 8; Laws, 1981, ch. 491, § 8; Laws, 1983, ch. 466, § 9; Laws, 1985, ch. 346; Laws, 1991, ch. 480, § 7, eff from and after July 1, 1991.

NOTES: EDITOR'S NOTE. --Laws, 1981, ch. 491, § 15, provides as follows:

"SECTION 15. Prosecutions, convictions and penalties for violations which occurred prior to the effective date of this act under laws amended or repealed by this act, or suspensions or denials of driver's licenses or permits made pursuant to laws amended or repealed by this act, shall not be affected or abated by the provisions of this act."

Laws, 1983, ch. 466, § 12, eff from and after July 1, 1983, provides as follows:

"SECTION 12. Prosecutions, convictions and penalties for violations which occurred prior to July 1, 1983, under laws amended by this act, and suspensions or denials of driver's licenses, permits or privileges made pursuant to laws amended by this act, shall not be affected or abated by the

provisions of this act. In addition, convictions which occurred prior to July 1, 1983, under laws amended by this act shall be counted for the purposes of determining the penalties which shall be imposed on any person convicted for a second or subsequent offense under the provisions of the laws amended by this act."

JUDICIAL DECISIONS
1. IN GENERAL.
The conduct of a justice court judge warranted his removal from office where, during a 3-year period, he adjudicated approximately 28 driving under the influence cases wherein he did not file an abstract of the court record of convictions with the Commissioner of Public Safety as required by § 63-11-37 and he adjudicated approximately 552 routine traffic convictions but failed to report these to the Department of Public Safety as required by § 63-9-17. In re Quick, 553 So. 2d 522 (Miss. 1989).

RESEARCH REFERENCES

ALR. Admissibility of traffic conviction in later state civil trial. 73 A.L.R.4th 691.

AM JUR. 1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 475 (complaint, petition, or declaration-by license holder -- against administrative agency -- to enjoin further proceedings to suspend or revoke license -- attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license).
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Miss. Code Ann. § 63-11-39 (2014)

§ 63-11-39. Reduction of charges under chapter
The court having jurisdiction or the prosecutor shall not reduce any charge under this chapter to a lesser charge.

HISTORY: SOURCES: Laws, 1992, ch. 500, § 5; Laws, 1996, ch. 527, § 13, eff from and after July 2, 1996.

NOTES: EDITOR'S NOTE. --Former § 63-11-39 [Codes, 1942, § 8175-15; Laws, 1971, ch. 515, § 15; 1981, ch. 491, § 10; 1983, ch. 466, § 10], which allowed admission of evidence of a person's refusal to take a chemical test of his blood and prohibited reduction of a driving under the influence charge, was repealed by Laws, 1991, ch. 573, § 141.

JUDICIAL DECISIONS
1. IN GENERAL.
Sole function of statute was to prohibit reduction of DUI charges to non-DUI charges, the modifying phrase "under this chapter," signifying DUI offenses, was not repeated after the phrase "to a lesser charge." Ostrander v. State, 803 So. 2d 1172 (Miss. 2002).
Reducing three citations for driving under influence (DUI) in violation of statute precluding such reductions, assessing costs of fines in excess of statutory maximum in six criminal cases, failing to

require affidavits in four criminal cases, issuing orders without authority, and allowing cameras in courtroom warranted public reprimand, fine of $2,628, and assessment of costs. Mississippi Comm'n on Judicial Performance v. Emmanuel, 688 So. 2d 222 (Miss. 1996).

Justice court judge improperly handled driving under the influence charges (DUI) and acted beyond his legal authority in violation of judicial canons when he reduced charges to possession of beer and whiskey because prosecuting attorney informed him that evidence was not clear as to whether defendant was driving and that he had an agreement with defendant to pay fines on lesser charge. Mississippi Comm'n on Judicial Performance v. Dodds, 680 So. 2d 180 (Miss. 1996).

2.-10. [RESERVED FOR FUTURE USE].

11. UNDER FORMER LAW.

Trial court did not err in refusing to exclude the results of defendant's urine analysis performed by a hospital employee simply because the employee did not hold a valid permit from the State Crime Laboratory (Mississippi) pursuant to Miss. Code Ann. § 63-11-19; because the employee, who had 40 years experience, was clearly qualified to perform the analysis at issue, and defendant did not question the credibility of the test or the procedures used by the employee in performing the analysis, the court found that the test was reasonable and the results admissible under Miss. Code Ann. §§ 63-11-39, 63-11-13. Jones v. State, 881 So. 2d 209 (Miss. Ct. App. 2002), affirmed by 2003 Miss. LEXIS 588 (Miss. Oct. 30, 2003).

Miss. Code Ann. § 63-11-13 makes clear that test results from persons performing analyses at the behest of the accused may be admitted, and the language in § 63-11-13, regarding "any other test" is comparable to the language in former Miss. Code Ann. § 63-11-39(2), which authorized admission of "any other competent evidence" bearing upon the issue of whether a person was intoxicated; clearly "any other test," properly administered under appropriate procedures and designed to determine the alcohol or drug content of one's blood or urine, constitutes other competent evidence. Jones v. State, 881 So. 2d 209 (Miss. Ct. App. 2002), affirmed by 2003 Miss. LEXIS 588 (Miss. Oct. 30, 2003).

In a prosecution for homicide by culpable negligence, results of a blood test revealed that the defendant had considerably more than .10 percent alcohol content in his blood, the demarcation under § 63-11-39 between a presumption of whether he was driving under the influence of intoxicating liquor. Williams v. State, 434 So. 2d 1340 (Miss. 1983), but see Fisher v. Eupora, 587 So. 2d 878 (Miss. 1991).

A chemical analysis of defendant's blood performed by an individual not possessing a valid permit issued by the State Board of Health for making such analysis (Code 1972 § 63-11-19) was nevertheless admissible as other competent evidence under Code 1972 § 63-11-39 where evidence detailed in opinion established that test was reasonable. Cutchens v. State, 310 So. 2d 273 (Miss. 1975), cert. denied, 423 U.S. 1061, 96 S. Ct. 799, 46 L. Ed. 2d 652 (1976).

ATTORNEY GENERAL OPINIONS

Section 63-11-39, as reinstated, applies to all cases pending from and after effective date. Simpson, Nov. 5, 1992, A.G. Op. #92-0815.

Miss. Code Section 63-11-39 does not limit court at trial on merits on ultimate disposition of case; it prohibits reduction of charge at any stage of proceeding, but not dismissals or final verdicts. Cooke, June 9, 1993, A.G. Op. #93-0239.

Term "lesser charge" referred to in statute means non-DUI offenses and charge of DUI second or DUI third may be changed by amendment to DUI first or DUI second, if facts warrant. Moffett, July 19, 1993, A.G. Op. #93-0437.

Statute only applies to cases where defendant is charged with driving under influence of liquor or alcohol and therefore charge of driving under influence of other substance could be reduced on motion of prosecutor. Clinton, June 30, 1994, A.G. Op. #93-0436.

Based on this section, a DUI charge may only be reduced to a non-DUI offense if there is no BAC (blood alcohol content) reading of .10%. If there is no BAC reading, the DUI charge may be reduced by the court on a motion by the prosecutor. Spencer, April 5, 1996, A.G. Op. #96-0154.

The amendment to Section 63-11-39 went into effect July 2, 1996. Therefore, no DUI charge may be reduced to a non-DUI charge after July 2, 1996, regardless of when the offense occurred. Emfinger, September 6, 1996, A.G. Op. #96-0617.

Under this section, there is no prohibition against reducing a DUI charge if the defendant registers below .10 on the intoxilyzer. Childers, July 8, 1996, A.G. Op. #96-0444.

A municipal prosecuting attorney may not request a court to reduce a third offense of driving under the influence charge to a second offense as a municipal court does not have jurisdiction over such a charge; instead, after a probable cause finding, the municipal court should bind such a case over to the grand jury and, once a case has been bound over, it must be heard by the grand jury. Johnston, Feb. 26, 2002, A.G. Op. #01-0780.

Amending a charge of violation of § 63-11-40 to a violation of § 63-1-57 when the facts of the case do not merit such an amendment would constitute a violation of this section. Mitchell, Aug. 27, 2004, A.G. Op. 04-0435.

ALR. Drunk driving: motorist's right to private sobriety test. 45 A.L.R.4th 11.

AM JUR. 8 Am. Jur. 2d, Automobiles and Highway Traffic §§ 982-993, 995.
2 Am. Jur. Proof of Facts 585, Blood Tests.
17 Am. Jur. Proof of Facts 2d 1, Defense to Charge of Driving Under Influence of Alcohol.

CJS. 61A C.J.S., Motor Vehicles §§ 1592-1613, 1619, 1620.

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Miss. Code Ann. § 63-11-40 (2014)

§ 63-11-40. Driving while driving license or privilege cancelled, suspended or revoked

Any person whose driver's license, or driving privilege has been cancelled, suspended or revoked under the provisions of this chapter and who drives any motor vehicle upon the highways, streets or public roads of this state, while such license or privilege is cancelled, suspended or revoked, shall be guilty of a misdemeanor and upon conviction shall be punished by imprisonment for not less than forty-eight (48) hours nor more than six (6) months, and fined not less than two hundred dollars ($ 200.00) nor more than five hundred dollars ($ 500.00).

The commissioner of public safety shall suspend the driver's license or driving privilege of any person convicted under the provisions of this section for an additional six (6) months. Such suspension shall begin at the end of the original cancellation, suspension or revocation and run
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consecutively.

HISTORY: SOURCES: Laws, 1983, ch. 466, § 11, eff from and after July 1, 1983.

NOTES: CROSS REFERENCES. --Suspension of driving privileges of person convicted of violations of Uniform Controlled Substance Law, see § 63-1-71.
Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of Title 63, see § 99-19-73.

JUDICIAL DECISIONS
1. IN GENERAL.
Statute providing penalties for operation of vehicle while under influence of intoxicating liquor or other substance provides only for concurrent suspension periods for multiple offenses; time of license suspension begins to run when Commissioner of Public Safety receives abstract of judgment and issues order of suspension, regardless of whether some other period of suspension is also running. State, Dep't of Pub. Safety v. Prine, 687 So. 2d 1116 (Miss. 1996).

ATTORNEY GENERAL OPINIONS
If an individual has his license suspended under § 63-11-23 prior to going to court, and is subsequently charged with violating this section, an acquittal for the original DUI charge has no effect on the charge for driving with license suspended for DUI. Hester, May 21, 1999, A.G. Op. #99-0242.
An individual who has had his driving privileges revoked may be charged under the statute for driving while his driving privileges are suspended even though he never had a valid driver's license to begin with. Franklin, May 17, 2002, A.G. Op. #02-0260.
Amending a charge of violation of this section to a violation of § 63-1-57 when the facts of the case do not merit such an amendment would constitute a violation of § 63-11-39 this section. Mitchell, Aug. 27, 2004, A.G. Op. 04-0435.

AM JUR. 4 Am. Jur. Proof of Facts 3d 229, Proof and Disproof of Alcohol-Induced Driving Impairment Through Breath Alcohol Testing.
4 Am. Jur. Proof of Facts 3d 439, Unreliability of the Horizontal Gaze Nystagmus Test.
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Miss. Code Ann. § 63-11-41 (2014)

§ 63-11-41. Admissibility in criminal prosecution of evidence of refusal to submit to chemical test
If a person under arrest refuses to submit to a chemical test under the provisions of this chapter, evidence of refusal shall be admissible in any criminal action under this chapter.

HISTORY: SOURCES: Codes, 1942, § 8175-22; Laws, 1971, ch. 515, § 22, eff from and after April 1, 1972.

JUDICIAL DECISIONS

1. IN GENERAL.

Evidence was sufficient to support defendant's driving under the influence conviction where two police officers smelled alcohol emitting from defendant's vehicle, defendant exhibited physical signs of impairment during field sobriety tests, and defendant refused to submit to an Intoxilyzer test, which was admissible pursuant to Miss. Code Ann. § 63-11-41. Lobo v. City of Ridgeland, -- So. 3d --, 2013 Miss. App. LEXIS 300 (Miss. Ct. App. May 28, 2013).

Evidence was sufficient to support defendant's conviction for common law DUI under Miss. Code Ann. § 63-11-30(1)(a) (Rev. 2004) as it showed that defendant admitted to the officer who stopped his vehicle that he had drunk two beers while he was driving, that he also admitted that he had drunk liquor and beer earlier in the day, that the officer smelled a strong odor of alcohol coming from defendant and observed defendant's glassy eyes, and that defendant refused to field sobriety test and the chemical test. Evidence that defendant refused the chemical test was admissible pursuant to Miss. Code Ann. § 63-11-41 (Rev. 2004) and Miss. R. Evid. 402. Ellis v. State, 77 So. 3d 1119 (Miss. Ct. App. 2011), writ of certiorari denied en banc by 78 So. 3d 906, 2012 Miss. LEXIS 25 (Miss. 2012).

During defendant's trial for DUI, the court did not err in considering defendant's refusal to submit to a breathalyzer test because the evidence was admissible under the statute and relevant. Knight v. State, 14 So. 3d 76 (Miss. Ct. App. 2009).

In a prosecution for driving a motor vehicle while under the influence of intoxicating liquor, the admission into evidence under § 63-11-41 of the defendant's refusal to take a breathalyzer test did not violate the Fifth Amendment to the United States Constitution and Article 3, § 26 of the Mississippi Constitution, even though the defendant was not specifically warned that his refusal could be admitted into evidence against him; the penalty of introducing a refusal serves an important state interest in encouraging defendants to submit to a chemical test, and as the refusal is physical instead of testimonial, its introduction into evidence violates neither the Fifth Amendment nor § 26. Ricks v. State, 611 So. 2d 212 (Miss. 1992).

2. CONSTITUTIONALITY.

During defendant's trial for felony DUI, third offense, the admittance of defendant's refusal to submit to a breath test was not a violation of his right against self-incrimination under either Miss. Const. Art. 3, § 26 or USCS Const. Amend. 5; thus, defendant's challenge to the constitutionality of Miss. Code Ann. § 63-11-41 failed. Starkey v. State, 941 So. 2d 899 (Miss. Ct. App. 2006).

RESEARCH REFERENCES

AM JUR. 7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 352-356.

4 Am. Jur. Proof of Facts 3d 229, Proof and Disproof of Alcohol-Induced Driving Impairment Through Breath Alcohol Testing.

4 Am. Jur. Proof of Facts 3d 439, Unreliability of the Horizontal Gaze Nystagmus Test.

CJS. 61A C.J.S., Motor Vehicles §§ 1592-1613.

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Miss. Code Ann. § 63-11-43 (2014)

§ 63-11-43. Repealed

Repealed by Laws, 1991, ch. 573, § 141, eff from and after July 1, 1991.

[Codes, 1942, § 8175-23; Laws, 1971, ch. 515, § 23]

NOTES: EDITOR'S NOTE. --Former § 63-11-43 related to admissibility of test results or of submission or nonsubmission to test in civil case.
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Miss. Code Ann. § 63-11-45 (2014)

§ 63-11-45. Denial of insurance coverage on ground of refusal to submit to test or upon basis of test results

No coverage otherwise afforded under any policy of insurance shall be denied on the ground that any person has refused any test provided for by this chapter nor on the basis of the results of any such test. Any provision to such effect in any insurance policy hereinafter issued shall be void.

HISTORY: SOURCES: Codes, 1942, § 8175-25; Laws, 1971, ch. 515, § 29, eff from and after April 1, 1972.

JUDICIAL DECISIONS

1. IN GENERAL.

In a suit by a minor driver against a insurer seeking coverage for injuries suffered in a one-car accident, the minor's excessive blood alcohol level was admissible because the blood was tested by a hospital, not by a police officer; its admission did not violate Miss. Code Ann. § 63-11-45 because the test did not fall within the implied consent law. Allen v. Clarendon Nat'l Ins. Co. -- F. Supp. 2d --, 2006 U.S. Dist. LEXIS 64602 (S.D. Miss. Sept. 8, 2006).

RESEARCH REFERENCES

AM JUR. 4 Am. Jur. Proof of Facts 3d 229, Proof and Disproof of Alcohol-Induced Driving Impairment Through Breath Alcohol Testing.

4 Am. Jur. Proof of Facts 3d 439, Unreliability of the Horizontal Gaze Nystagmus Test.
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Miss. Code Ann. § 63-11-47 (2014)

§ 63-11-47. Selection and purchase of equipment and supplies

The commissioner of public safety, acting in concert with the state crime laboratory created pursuant to Section 45-1-17, is hereby expressly authorized and directed to determine the equipment and supplies which are adequate and necessary from both a medical and law enforcement standpoint for administration of this chapter. The commissioner of public safety, upon receiving such recommendation from the state crime laboratory, shall recommend an equipment standard for such equipment to the state fiscal management board. The state fiscal management board, using such a uniform standard for said equipment, shall advertise its intention of purchasing said equipment by one (1) publication in at least one (1) newspaper having general circulation in the State of Mississippi at least ten (10) days before the purchase of such equipment and supplies, and the advertisement shall clearly and distinctly describe the articles to be purchased, and shall receive sealed bids thereon which shall be opened in public at a time and place to be specified in the

advertisement.

The state fiscal management board shall accept the lowest and best bid for said equipment and supplies; in its discretion, it may reject any and all bids submitted. The lowest and best bid for said equipment and supplies accepted by the state fiscal management board shall be the state-approved price of said equipment for purchase by the state, county and city governments.

Title to all such testing equipment in the state purchased hereunder shall remain in the commissioner of public safety regardless of what entity pays the purchase price.

The state, counties and municipalities may purchase in the name of the commissioner of public safety such equipment and supplies from other vendors of said equipment and supplies necessary to implement this chapter, provided they purchase of the same quality and standard as certified to the state fiscal management board and approved by the department. However, such equipment and supplies shall not be purchased by the state, counties and municipalities unless it is at a price equivalent to or lower than that approved by the state fiscal management board, pursuant to the bid procedure as outlined herein.

HISTORY: SOURCES: Codes, 1942, § 8175-26; Laws, 1971, ch. 515, § 30; Laws, 1981, ch. 491, § 13; Laws, 1984, ch. 488, § 263, eff from and after July 1, 1984.

NOTES: EDITOR'S NOTE. --Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration".

JUDICIAL DECISIONS
1. IN GENERAL.
Duties and responsibilities, including allowing authority for Educational Television to contract (§ 37-63-11), giving concurrence for the use of funds to travel outside the continental United States (§ 25-3-41), advertising for and accepting bids on equipment for the State Crime Laboratory (§ 63-11-47), granting authority for the purchase of motor vehicles by state departments, institutions, or agencies (§ 25-1-77), and approving dispersement of funds by the Mississippi Air and Water Pollution Commission (§ 49-17-13), are administrative functions within the prerogative of the executive department, and statutes vesting those powers and functions in members of the legislature violate Miss. Const. Art. 1 § 2 and are unconstitutional. Alexander v. State ex rel. Allain, 441 So. 2d 1329 (Miss. 1983).

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Miss. Code Ann. § 63-11-49 (2014)

§ 63-11-49. Authorization for impoundment and forfeiture of vehicle seized under chapter; notice of intention to forfeit; forfeiture to spouse; request for judicial review

(1) When a vehicle is seized under Section 63-11-30(2)(c) or (d), the arresting officer shall impound the vehicle and the vehicle shall be held as evidence until a court of competent jurisdiction makes a final disposition of the case and the vehicle may be forfeited by the administrative forfeiture procedures provided for in this section upon final disposition as provided in Section 63-11-30(2)(c).

(2) The attorney for the law enforcement agency shall provide notice of intention to forfeit the seized vehicle administratively, by certified mail, return receipt requested, to all persons who are required to be notified pursuant to Section 63-11-51.

(3) In the event that notice of intention to forfeit the seized vehicle administratively cannot be given as provided in subsection (2) of this section because of refusal, failure to claim, insufficient address or any other reason, the attorney for the law enforcement agency shall provide notice by publication in a newspaper of general circulation in the county in which the seizure occurred for once a week for three (3) consecutive weeks.

(4) Notice pursuant to subsections (2) and (3) of this section shall include the following information:

(a) A description of the vehicle;

(b) The approximate value of the vehicle;

(c) The date and place of the seizure;

(d) The connection between the vehicle and the violation of Section 63-11-30;

(e) The instructions for filing a request for judicial review; and

(f) A statement that the vehicle will be forfeited to the law enforcement agency if a request for judicial review is not timely filed.

(5) In the event that a spouse of the owner of the seized vehicle makes a showing to the department that the seized vehicle is the only source of transportation for the spouse, the chief law enforcement officer shall declare that the vehicle is thereby forfeited to such spouse. A written declaration of forfeiture of a vehicle pursuant to this subsection shall be sufficient cause for the title to the vehicle to be transferred to the spouse. The provisions of this subsection shall apply only to one (1) forfeiture per vehicle; if the vehicle is the subject of a subsequent forfeiture proceeding by virtue of a subsequent conviction of either spouse, the spouse to whom the vehicle was forfeited pursuant to the first forfeiture proceeding may not utilize the remedy provided herein in another forfeiture proceeding.

(6) Persons claiming an interest in the seized vehicle may initiate judicial review of the seizure and proposed forfeiture by filing a request for judicial review with the attorney for the law enforcement agency within thirty (30) days after receipt of the certified letter or within thirty (30) days after the first publication of notice, whichever is applicable.

(7) If no request for judicial review is timely filed, the attorney for the law enforcement agency shall prepare a written declaration of forfeiture of the subject vehicle and the forfeited vehicle shall be disposed of in accordance with the provisions of Section 63-11-53.

(8) Upon receipt of a timely request for judicial review, the attorney for the law enforcement agency

shall promptly file a petition for forfeiture and proceed as provided in Section 63-11-51.

HISTORY: SOURCES: Laws, 1992, ch. 500, § 2; Laws, 1996, ch. 527, § 14, eff from and after July 2, 1996.

NOTES: JOINT LEGISLATIVE COMMITTEE NOTE. --Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (7). The reference to "63-11-51" was changed to "63-11-53." The Joint Committee ratified the correction at its July 8, 2004 meeting.

CROSS REFERENCES. --Forfeiture of vehicle owned by person convicted of third or subsequent violation of drunk or drugged driving law, see § 63-11-30.

Petition for forfeiture of vehicle seized for violation of implied consent law, see § 63-11-51.

Money derived from seized and forfeited vehicles to be deposited in special fund, see § 63-11-53.

ATTORNEY GENERAL OPINIONS

A district attorney and law enforcement agency may agree that the district attorney will file DUI vehicle forfeiture petitions on behalf of that entity upon final conviction of the defendant. Mitchell, Jan. 25, 2000, A.G. Op. #2000-0003.

It is not necessary to hold an evidentiary hearing prior to releasing a vehicle to a third party or lienholder. Pace, April 7, 2000, A.G. Op. #2000-0178.

If a vehicle is titled jointly in the name of the defendant and the spouse, and the spouse shows that the vehicle is the only source of transportation, the vehicle shall be forfeited to the spouse; however, if the vehicle is titled jointly to the defendant and someone other than the spouse, the vehicle may be forfeited subject to the interested party seeking a judicial review of the seizure and proposed forfeiture and it would then be within the discretion of a court with competent jurisdiction to determine whether the vehicle should be forfeited. Johnston, Jan. 10, 2003, A.G. Op. #02-0762.

ALR. Relief to claimant of interest in motor vehicle subject to state forfeiture for use in violation of liquor laws. 14 A.L.R.3d 221.

Relief to owner of motor vehicle subject to state forfeiture for use in violation of narcotics laws. 50 A.L.R.3d 172.

AM JUR. 36 Am. Jur. 2d, Forfeitures and Penalties §§ 14 et seq.

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Miss. Code Ann. § 63-11-51 (2014)

§ 63-11-51. Institution of forfeiture proceedings; filing and service of petition for forfeiture

(1) Except as otherwise provided in Section 63-11-49, when a vehicle is seized under Section 63-11-30(2)(c) or (d), proceedings under this section shall be instituted promptly upon final conviction.

(2) A petition for forfeiture shall be filed promptly in the name of the State of Mississippi, the county or the municipality and may be filed in the county in which the seizure is made, the county in which

the criminal prosecution is brought or the county in which the owner of the seized vehicle is found. Forfeiture proceedings may be brought in the circuit court or the county court if a county court exists in the county and the value of the seized vehicle is within the jurisdictional limits of the county court as set forth in Section 9-9-21. A copy of such petition shall be served upon the following persons by service of process in the same manner as in civil cases:

(a) The owner of the vehicle, if address is known;

(b) Any secured party who has registered his lien or filed a financing statement as provided by law, if the identity of such secured party can be ascertained by the law enforcement agency by making a good faith effort to ascertain the identity of such secured party as described in subsections (3), (4), (5), (6) and (7) of this section;

(c) Any other bona fide lienholder or secured party or other person holding an interest in the vehicle in the nature of a security interest of whom the law enforcement agency has actual knowledge;

(d) Any person in possession of the vehicle subject to forfeiture at the time that it was seized.

(3) If the vehicle is susceptible of titling under the Mississippi Motor Vehicle Title Law and if there is any reasonable cause to believe that the vehicle has been titled, the law enforcement agency shall inquire of the State Tax Commission as to what the records of the State Tax Commission show regarding who is the record owner of the vehicle and who, if anyone, holds any lien or security interest which affects the vehicle.

(4) If the vehicle is not titled in the State of Mississippi, then the law enforcement agency shall attempt to ascertain the name and address of the person in whose name the vehicle is licensed, and if the vehicle is licensed in a state which has in effect a certificate of title law, the agency shall inquire of the appropriate agency of that state as to what the records of the agency show regarding who is the record owner of the vehicle and who, if anyone, holds any lien, security interest or other instrument in the nature of a security device which affects the vehicle.

(5) In the event the answer to an inquiry states that the record owner of the vehicle is any person other than the person who was in possession of it when it was seized, or states that any person holds any lien, encumbrance, security interest, other interest in the nature of a security interest, which affects the vehicle, the law enforcement agency shall cause any record owner and also any lienholder, secured party, other person who holds an interest in the vehicle in the nature of a security interest, to be named in the petition of forfeiture and to be served with process in the same manner as in civil cases.

(6) If the owner of the vehicle cannot be found and served with a copy of the petition of forfeiture, the law enforcement agency shall file with the clerk of the court in which the proceeding is pending an affidavit to such effect, whereupon the clerk of the court shall publish notice of the hearing addressed to "the Unknown Owner of . . .," filling in the blank space with a reasonably detailed description of the vehicle subject to forfeiture. Service by publication shall contain the other

requisites prescribed in Section 11-33-41, and shall be served as provided in Section 11-33-37 for publication of notice for attachments at law.

HISTORY: SOURCES: Laws, 1992, ch. 500, § 3; Laws, 1996, ch. 527, § 15, eff from and after July 2, 1996.

NOTES: EDITOR'S NOTE. --Section 27-3-4 provides that the terms ""Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

CROSS REFERENCES. --Forfeiture of vehicle seized for violation of this chapter, see § 63-11-49.
Money derived from seized and forfeited vehicles to be deposited in special fund, see § 63-11-53.

ATTORNEY GENERAL OPINIONS
A district attorney and law enforcement agency may agree that the district attorney will file DUI vehicle forfeiture petitions on behalf of that entity upon final conviction of the defendant. Mitchell, Jan. 25, 2000, A.G. Op. #2000-0003.

ALR. Relief to claimant of interest in motor vehicle subject to state forfeiture for use in violation of liquor laws. 14 A.L.R.3d 221.
Relief to owner of motor vehicle subject to state forfeiture for use in violation of narcotics laws. 50 A.L.R.3d 172.
Validity, construction, and application of statute permitting forfeiture of motor vehicle for operating while intoxicated. 89 A.L.R.5th 539.

AM JUR. 36 Am. Jur. 2d, Forfeitures and Penalties §§ 14 et seq.
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Miss. Code Ann. § 63-11-53 (2014)

§ 63-11-53. Disposition of forfeited vehicles; disposition of money derived from forfeited vehicles

(1) All money derived from the seizure and forfeiture of vehicles under Section 63-11-30(2)(c) and (d) and Sections 63-11-49 and 63-11-51 by the Mississippi Highway Safety Patrol shall be forwarded to the State Treasurer and deposited in a special fund which is hereby created for use by the Department of Public Safety upon appropriation by the Legislature. Unexpended amounts remaining in such special fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned on amounts in such special fund shall be deposited to the credit of the special fund. All other law enforcement agencies shall establish a special fund which is to be used for law enforcement purposes to purchase equipment for the law enforcement agency, and any interest earned on the amount in such special fund shall be deposited to the credit of the special fund.

(2) Except as otherwise provided in subsection (3), all vehicles that have been forfeited shall be sold

at a public auction for cash by the law enforcement agency, to the highest and best bidder after advertising the sale for at least once each week for three (3) consecutive weeks, the last notice to appear not more than ten (10) days nor less than five (5) days prior to such sale, in a newspaper having a general circulation in the county in which the vehicle was seized. Such notices shall contain a description of the vehicle to be sold and a statement of the time and place of sale. It shall not be necessary to the validity of such sale either to have the vehicle present at the place of sale or to have the name of the owner thereof stated in such notice. The proceeds of the sale shall be disposed of as follows:

(a) To any bona fide lienholder, secured party, or other party holding an interest in the vehicle in the nature of a security interest, to the extent of his interest; and

(b) The balance, if any, remaining after deduction of all storage, court costs and expenses of liquidation shall be deposited in the manner described in subsection (1) of this section.

(3) The law enforcement agency may maintain, repair, use and operate for official purposes all vehicles that have been forfeited if the vehicles are free from any interest of a bona fide lienholder, secured party or other party who holds an interest in the nature of a security interest. The agency may purchase the interest of a bona fide lienholder, secured party or other party who holds an interest so that the vehicle can be released for its use. If the vehicle is susceptible of titling under the Mississippi Motor Vehicle Title Law, the agency shall be deemed to be the purchaser, and the certificate of title shall be issued to it as required by subsection (4) of this section.

(4) The State Tax Commission shall issue a certificate of title to any person who purchases vehicles under the provisions of this section when a certificate of title is required under the laws of this state.

HISTORY: SOURCES: Laws, 1992, ch. 500, § 4; Laws, 1996, ch. 527, § 16, eff from and after July 2, 1996.

NOTES: EDITOR'S NOTE. --Section 27-3-4 provides that the terms ""Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

CROSS REFERENCES. --Petition for forfeiture of vehicle seized for violation of implied consent law, see § 63-11-51.

ATTORNEY GENERAL OPINIONS

Proceeds from the public sale of a forfeited vehicle should be applied to any bona fide liens to the extent of the liens, and if the proceeds are insufficient to pay off the liens, then the liens are extinguished and no longer secured by the vehicle. Bryan, Aug. 15, 1997, A.G. Op. #97-0498.

All forfeited vehicles, except those which the agency chooses to keep for its own official use, must be sold at a public auction; there are no provisions for forfeited DUI vehicles to be sold through sealed bids. King, Dec. 17, 1999, A.G. Op. #99-0686.

A governing authority may utilize funds obtained from DUI forfeitures to retain counsel and support staff to handle DUI vehicle forfeitures, and may enter into an agreement with the district attorney's office for this purpose. Mitchell, Jan. 25, 2000, A.G. Op. #2000-0003.

ALR. Relief to claimant of interest in motor vehicle subject to state forfeiture for use in violation of liquor laws. 14 A.L.R.3d 221.

Relief to owner of motor vehicle subject to state forfeiture for use in violation of narcotics laws. 50 A.L.R.3d 172.

AM JUR. 36 Am. Jur. 2d, Forfeitures and Penalties §§ 14 et seq.

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Miss. Code Ann. § 63-1-46 (2014)

Legislative Alert:
LEXSEE 2014 Miss. HB 412 -- See section 3.
LEXSEE 2014 Miss. SB 2794 -- See section 13.

§ 63-1-46. Fees for reinstatement of license subsequent to suspension, revocation or cancellation generally; disposition of fees; procedure and fees for reinstatement of license suspended for noncompliance with support order

(1) (a) Except as otherwise provided in this section, a fee of One Hundred Dollars ($ 100.00) shall be charged for the reinstatement of a license issued under this article to every person whose license has been validly suspended, revoked or cancelled.

(b) The funds received under the provisions of this subsection shall be distributed as follows:

(i) Twenty-five Dollars ($ 25.00) shall be deposited into the State General Fund in accordance with Section 45-1-23;

(ii) Twenty-five Dollars ($ 25.00) shall be paid to the Board of Trustees of the Public Employees' Retirement System for funding the Mississippi Highway Safety Patrol Retirement System as provided under Section 25-13-7;

(iii) Twenty-five Dollars ($ 25.00) shall be deposited into the special fund created in Section 63-1-45(3) for purchases of equipment by the Mississippi Highway Safety Patrol; and

(iv) Twenty-five Dollars ($ 25.00) shall be deposited into the Ignition Interlock Device Fund created in Section 63-1-43 by Chapter 489, Laws of 2013.

(2) (a) A fee of One Hundred Seventy-five Dollars ($ 175.00) shall be charged for the reinstatement of a license issued under this article to every person whose license has been validly suspended or revoked under the provisions of the Mississippi Implied Consent Law or as a result of a conviction of a violation of the Uniform Controlled Substances Law under the provisions of Section 63-1-71.

(b) The funds received under the provisions of this subsection shall be distributed as follows:

(i) One Hundred Dollars ($ 100.00) shall be deposited into the State General Fund in accordance with Section 45-1-23;

(ii) Twenty-five Dollars ($ 25.00) shall be paid to the Board of Trustees of the Public Employees' Retirement System for funding the Mississippi Highway Safety Patrol Retirement System as provided under Section 25-13-7;

(iii) Twenty-five Dollars ($ 25.00) shall be deposited into the special fund created in Section 63-1-45(3) for purchases of equipment by the Mississippi Highway Safety Patrol; and

(iv) Twenty-five Dollars ($ 25.00) shall be deposited into the Ignition Interlock Device Fund created in Section 63-1-43 by Chapter 489, Laws of 2013.

(3) A fee of Twenty-five Dollars ($ 25.00) shall be charged for the reinstatement of a license issued under this article to every person whose license has been validly suspended for nonpayment of child support under the provisions of Sections 93-11-151 through 93-11-163. The funds received under the provisions of this subsection shall be deposited into the State General Fund in accordance with Section 45-1-23.

(4) The procedure for the reinstatement of a license issued under this article that has been suspended for being out of compliance with an order for support, as defined in Section 93-11-153, and the payment of any fees for the reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be.

(5) All reinstatement fees charged under this section shall be in addition to the fee provided for application for a driver's license in Section 63-1-43.

HISTORY: SOURCES: Laws, 1980, ch. 335; Laws, 1985, ch. 376, § 18; Laws, 1989, ch. 501, § 1; Laws, 1991, ch. 468 § 3; Laws, 1996, ch. 507, § 11; Laws, 2013, ch. 517, § 1, eff from and after July 1, 2013.

NOTES: JOINT LEGISLATIVE COMMITTEE NOTE. --Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the last sentence of subsection (4). The words "This subsection (4) of Section (3) shall stand repealed" were changed to "This subsection (4) shall stand repealed". The Joint Committee ratified the correction at its May 20, 1998 meeting.

EDITOR'S NOTE. --Laws, 1990, Chapter 588, § 26, amended this section effective July 1, 1990, provided the Legislature by concurrent resolution adopted by the House and Senate in session prior to July 1, 1990, declared that sufficient funds were dedicated and made available for the implementation of Chapter 588. Funds, however, were not made available by the Legislature prior to July 1, 1990, and by direction of the Office of the Attorney General of the State of Mississippi, the amendatory provisions were not implemented. The text of the proposed amendment can be found in the 1990 General Laws of Mississippi.

Chapter 489, Laws of 2013, referred to in (1)(b)(iv) and (2)(b)(iv), also amended Section 63-1-45

and enacted Section 63-1-16.

AMENDMENT NOTES. --The 2013 amendment, in (1)(a), added the exception, substituted "One Hundred Dollars ($100.00)" for "Twenty-five Dollars ($25.00),"and deleted the former last sentence, which read: "This fee shall be in addition to the fee provided for in Section 63-1-43, Mississippi Code of 1972"; added (1)(b); deleted former (2), which read: "The funds received under the provisions of subsection (1) of this section shall be deposited into the State General Fund in accordance with Section 45-1-23, Mississippi Code of 1972"; redesignated former (3) as (2), and increased the fees charged therein from ($75.00) to ($175.00); added (2)(b) and (3); redesignated former (5) as (4); added (5); and made minor stylistic changes.

CROSS REFERENCES. --Operation of disability and relief fund for members of Mississippi Highway Safety Patrol, see § 25-13-7.

Provision that future funding for members who elect early retirement under the Highway Safety Patrol Retirement System shall be provided from surplus funds of such system as deposited therein pursuant to this section, see § 25-13-14.

Creation of highway patrol operating fund and budget therefor, see § 45-1-23.

Motorcycle operator's license, see § 63-1-6.

Fees for licenses generally, see § 63-1-43.

LexisNexis 50 State Surveys, Legislation & Regulations

Non-commercial Drivers Licenses

RESEARCH REFERENCES

AM JUR. 7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 116 et seq.

CJS. 60 C.J.S. Motor Vehicles §§ 353 et seq.

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